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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 128.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 3, 1894.

(15,621.)

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a Court of Appeals.

On appeal from the supreme court, first department.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs and Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant and Appellant.

Case on Appeal.

Charles F. Tabor, attorney general, attorney for plaintiffs and respondents.

Page & Taft, 45 William St., N. Y., attorneys for defendant and appellant.

$\frac{9}{5}\frac{9}{3}\frac{1}{6}$. Filed Nov. 21, 1892.

b Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 24th day of April, in the year of our Lord one thousand eight hundred and ninety-four, before the judges of said court.

Witness the Hon. Charles Andrews, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Remittitur, April 24th, 1894.

c THE PEOPLE OF THE STATE OF NEW YORK, Resp'd'ts,
ag'st
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD Co., App'l'nt.

Be it remembered that on the 21st day of November, in the year of our Lord one thousand eight hundred and ninety-two, The New York, New Haven and Hartford Railroad Company, the appellant in this action, came here into the court of appeals, by Page & Taft, its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York, and The People of the State of New York, the respondents in said action, afterwards appeared in said court of appeals, by Hon. S. W. Rosendate, attorney general, which said notice of appeal and the return thereto filed as aforesaid
d are hereunto annexed; whereupon the said court of appeals, having heard this cause argued by Mr. John M. Bowers, of counsel for the appellant, and by Mr. T. E. Hancock, attorney general, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme

court appealed from in this action be in all things affirmed, and it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court, and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

e Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals.

CLERK'S OFFICE, ALBANY, *April 24th*, 1894.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

GORHAM PARKS, *Clerk.*

1 Supreme Court, General Term, First Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellant.

Case Containing Exceptions.

Statement.

This action was commenced January 3, 1889. The complaint was served January 3, 1889. A demurrer was served February 12, 1889. This demurrer was overruled at special term, and an interlocutory judgment was entered accordingly. On appeals taken to the general term of the supreme court and to the court of appeals, the interlocutory judgment was affirmed. The defendant was given permission to answer, and on the 3d day of December, 1890, served the answer herein. An amended complaint was served the 17th day of December, 1890, and an answer thereto was served the 6th day of January, 1891. The name of the plaintiff is The People of the State of New York. The name of the defendant is The New York, New Haven and Hartford Railroad Company. There has been no change of parties pending this suit.

2 In Supreme Court.

Trial desired in New York county.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated December the 31st, 1888.

CHAS. F. TABOR,
Attorney General and Plaintiff's Attorney.

Office address and post-office address, Capitol, Albany, New York.

3 Supreme Court, County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant.

The People of the State of New York, plaintiffs above named, by their attorney general, complain of the said defendant, The New York, New Haven and Hartford Railroad Company and aver:

That the said New York, New Haven and Hartford Railroad Company is a foreign corporation duly organized and incorporated under the statutes of the State of Connecticut, and is now engaged and for several years last past has been engaged, in business in the State of New York and in operating a steam railroad between the city of Hartford, in the State of Connecticut, and the city of New York, in the State of New York, over a line of route described as follows, to wit: From the said city of Hartford southwesterly thirty-six miles to the city of New Haven, in the State of Connecticut; thence westerly and southwesterly through the territory of the State of Connecticut forty-six miles to the boundary line between the States of New York and Connecticut; and thence southwesterly through the territory of the State of New York twenty-six miles to the Grand Central station, in the city of New York.

That in the operation of such railroad, such company runs trains of passenger cars over the whole of such route by steam power
4 daily, including through trains from New York city to Hartford and from Hartford to New York city.

Said plaintiffs further aver that heretofore, to wit:

On the 18th day of June, 1887, the legislature of the State of New York duly enacted a statute, of which the following is a copy:

CHAP. 616.

"An act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto.

Passed June 18, 1887, three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. It shall not be lawful for any steam railroad doing business in this State, after the first day of May, eighteen hundred and eighty-eight, to heat its passenger cars, on other than mixed trains, by any stove or furnace kept inside of the car or suspended therefrom, except it may be lawful, in case of accident or other emergency, to temporarily use such stove or furnace with necessary fuel. Provided that *the* cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained, to be used only when the car is standing still. And provided also that this act shall not apply to railroads less than fifty miles in length, nor to the use of stoves, of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining cars.

SECTION 2. After November first, eighteen hundred and eighty-seven, guard-posts shall be placed in the prolongation of the line of bridge trusses so that in case of derailment the posts and not the bridge trusses shall receive the blow of the derailed locomotive or cars.

SECTION 3. Any person or corporation violating any of the provisions of this act shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such a violation shall continue.

SECTION 4. Upon application of any railroad covered by the provisions of this act, the board of railroad commissioners may approve of any proposed safeguard or device to be used under the provisions of this act, and thereafter the railroad using such safeguards or device so approved shall not be liable to any of the penalties prescribed by this act for a violation thereof in regard to any such safeguard or device.

SECTION 5. The violation of any of the provisions of this act will be deemed a misdemeanor.

SECTION 6. This act shall take effect immediately."

And said plaintiffs further aver that heretofore, to wit, on the 27th day of April, 1888, the legislature of the State of New York duly enacted a statute of which the following is a copy:

CHAP. 189.

"An act to amend chapter six hundred and sixteen, Laws of Eighteen hundred and eighty-seven, entitled 'An act to regulate the heating of steam passenger cars, and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto;' approved by the governor April 27, 1888; passed, three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section one of chapter six hundred and sixteen of the Laws of Eighteen hundred and eighty-seven, entitled 'An act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto,' is hereby amended so as to read as follows:

6 SECTION 1. It shall not be lawful for any steam railroad doing business in this State after the first day of November, eighteen hundred and eighty-eight, to heat its passenger cars, on other than mixed trains, by any stove or furnace kept inside the car or suspended therefrom, except it may be lawful, in case of accident or other emergency, to temporarily use such stove or furnace with necessary fuel. Provided, that in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained, to be used only when the car is standing still. And provided also, that this act shall not apply to railroads less than fifty miles in length, nor to use of stoves of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining-room cars.

SECTION 2. In special cases, the board of railroad commissioners may extend the time for a period not exceeding one year from November first, eighteen hundred and eighty-eight, for any steam railroad doing business in this State, to heat its passenger cars by any stove or furnace kept inside the car or suspended therefrom.

SECTION 5. This act shall take effect immediately."

And the said plaintiffs, The People of the State of New York, further aver, upon their information and belief, that the said defendant The New York, New Haven and Hartford Railroad Company, unlawfully and against the form of the statute above set forth, has, on each and every day since and after the first day of November, 1888, heated and continued to heat its passenger cars run daily as aforesaid on said railroad, both on through trains and over that part thereof lying within the State of New York on other than mixed trains, by stoves and furnaces kept within said cars, as the regular and usual method of heating said cars and in cases other than those of accident and other emergency; and that the board of railroad commissioners of the State of New York has not extended the time

7 of the said defendant to heat its passenger cars by any stove or furnace kept inside of such cars.

Whereby the said defendant has become indebted and incurred certain penalties to the said plaintiffs The People of the State of New York, as follows: A general penalty in the sum of one thousand dollars, and further penalties in the sum of one hundred dollars for each and every day on which it has operated its passenger cars with stoves and furnaces as aforesaid after the first day of November, 1888, sixty days in all, which said further penalties aggregate the sum of six thousand dollars.

Wherefore, the said plaintiffs The People of the State of New York demand judgment against the defendant The New York, New Haven and Hartford Railroad Company for seven thousand dollars, with costs.

CHAS. F. TABOR,
Attorney General.

STATE OF NEW YORK, }
County of Albany, } ss.:

Charles F. Tabor, being duly sworn, says that he is the attorney general of the State of New York, and one of the plaintiffs herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

CHARLES F. TABOR.

Subscribed and sworn to before me this 31st day of December, 1888.

EDWIN A. BEDELL,
Notary Public, Albany Co., N. Y.

8 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The defendant demurs to the complaint herein on the ground that it appears upon the face thereof that it does not state facts sufficient to constitute a cause of action.

PAGE & TAFT,
Attorneys for the Defendant.

The issues of law raised by the demurrer to the complaint in this action came on for trial before the Hon. M. J. O'Brien, a justice of this court, without a jury, at a special term on the first day of April, 1889. After counsel for the respective parties had been heard and due deliberation had the court rendered its decision in favor of the plaintiffs.

9 At a special term of the supreme court, held at the county court-house in the city of New York, on the 5th day of June, 1889.

Present: Hon. Morgan J. O'Brien, justice.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant.

The issues of law raised by demurrer to the complaint herein having come on to be tried at a special term of this court held at the court-house in the city of New York, beginning on the first Monday of March, 1889, and a trial thereof having been had, Mr. Henry W. Taft appearing as counsel for the defendant for the demurrer, and Mr. William A. Poste, deputy attorney general, for The People, opposed;

It is decided and ordered, that the defendant's demurrer herein be, and the same hereby is, overruled, with leave to serve an answer, on payment of costs, within twenty days after service of this order, and interlocutory judgment to be entered thereon.

It is further ordered, that in case the defendant fails to serve an answer as aforesaid, then that the plaintiff have judgment absolute against the defendant for seven thousand dollars damages with costs.

10 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs, *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant. — Judgment, June 5, 1889.

The issues of law raised by the demurrer to the complaint herein having been tried at a special term of this court, held at the county court-house in the city of New York, beginning on the first Monday of March, 1889, and the court having rendered its decision thereon overruling said demurrer with costs, with leave to the defendant to answer on payment of costs, and the said decision having been filed, and said costs taxed; on motion of the attorney general,

Ordered and adjudged, that the demurrer of the defendant to the complaint herein be, and the same hereby is, overruled, and that the plaintiffs recover of the defendant the sum of forty-five $\frac{25}{100}$ dollars costs.

It is further ordered and adjudged, that the said defendant have leave within twenty days after service of said decision and this judgment, and on payment of the above costs, to serve an answer to the complaint herein, if so advised.

11 Supreme Court.

THE PEOPLE, &c.,
against
THE N. Y., N. HAVEN, &c., R. R. Co.

O'BRIEN, *J.:*

This action is brought to recover penalties to the amount of $7,000 from the defendant for alleged violations of the provisions of chapter 616 of the Laws of 1887, as amended by chapter 189 of the Laws of 1888. These acts seek to regulate the heating of steam passenger cars, &c., and declare it unlawful for any steam railroad doing business in this State to heat its passenger cars by any stove or furnace kept inside the car or suspended therefrom.

The acts contained a provision that they shall not apply to railroads less than fifty miles in length. It is conceded that the defendant has not complied with the provisions of the act.

To the complaint the defendant demurs upon the ground that it did not state facts sufficient to constitute a cause of action.

In support of the demurrer it is claimed that the act in question was not intended to apply to cars on railroad lines such as the defendant company, whose line is partly within but principally without the State of New York. A portion of the defendant's road within the State of New York is but twenty-six miles in length, and it is therefore claimed that it comes within the exemption provided by the act as applicable to roads less than fifty miles in length. In an inquiry as to the purpose, character and intent of the legislature, the court will take notice of such facts judicially as are matters of public notoriety, and recur when necessary for the
12 purpose of determining the scope of such intent, and the history of the evil conditions the statutes were intended to remedy.

Short railroads in this State are merely local conveniences. The car stove in connection with a sleeping car on long trains of passenger coaches, running over a trunk or through system of passenger transportation, was undoubtedly the evil which the legislature intended to remedy. It being a police regulation which the legislature had the right to enact, and the same not conflicting with any Federal or State restrictions upon the legislative power in this regard, I am of opinion that the act is valid and that it applies to the defendant road, which is more than fifty miles in length, although having but twenty-four miles thereof within this State. This seems to me to be the fair, natural and reasonable construction to be given to the acts.

Plaintiff is therefore entitled to judgment upon the demurrer with costs, with leave to the defendant to answer over.

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY. } Notice of Appeal.

Take notice that the above-named defendant The New York, New Haven and Hartford Railroad Company does hereby appeal to general term of this court for the first department from the interlocutory judgment of the said court in this action, entered in the
13 office of the clerk of said court on the fifth day of June, 1889, and from each and every part of said interlocutory judgment.

Dated June 12th, 1889.

Yours, &c.,

PAGE & TAFT,
Attorneys for Defendant and Appellant.

To Charles F. Tabor, Esq., attorney for plaintiff and respondent; and Edward F. Reilly, Esq., clerk.

At a general term of the supreme court, held in and for the first department, at the court-house in the city of New York, on the 24th day of January, 1890.

Present: The Honorable Charles H. Van Brunt, justice; the Honorable John R. Brady, the Honorable Charles Daniels, associate justices.

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff, Respondent,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant, Appellant.

The defendant having appealed to this court from an in-
14 terlocutory judgment, which was entered and docketed in the office of the clerk of the county of New York on the 5th day of June, 1889, overruling the defendant's demurrer to the complaint herein with $45.25 costs, with leave to the defendant within twenty days after service of such judgment and payment of costs to serve an answer if so advised, and said appeal having come on to be heard at a general term of the supreme court held in and for the first department at the county court-house in the city of New York, in the month of October of 1889, after hearing Mr. Henry W. Taft, of counsel for the appellant, and Mr. William A. Poste, deputy attorney general, for the respondent, due consideration having been had,

It is ordered, that the judgment of the supreme court at special term, entered as aforesaid on the 5th day of June, 1889, overruling the demurrer to the complaint, with costs to the plaintiff in the sum of $45.25, be, and the same hereby is, affirmed with costs of this appeal.

And it is further ordered that the said defendant have leave within

thirty days after service of notice of entry of judgment upon this order and on payment of the costs of the judgment appealed from and costs of this appeal as aforesaid to serve an answer to the complaint herein, if so advised.

To Page & Taft, Esqs., attorneys for defendant.

GENTLEMEN: You will please take notice that an order, of which the within is a copy was duly entered in the office of the clerk of the county of New York on the 19th day of February, 1890.

Dated New York, February 19, 1890.

Yours, &c. CHAS. F. TABOR,
Attorney General, Plaintiff's Attorney.

15 Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs, *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant. } Judgment, February 19, 1890.

The defendant having taken an appeal to the general term of this court from an interlocutory judgment herein, which was entered and docketed in the office of the clerk of the county of New York on the 5th day of June, 1889, overruling the defendant's demurrer to the complaint herein with $45.25 costs, with leave to the defendant, within thirty days after service of such judgment and payment of costs, to serve an answer if so advised; and said appeal having been heard by a general — of this court, held in and for the first department at the county court-house in the city of New York, in October, 1889, and the said court having affirmed the said judgment appealed from in all respects, with costs, and an order to such effect having been duly entered, it is, on motion of Charles F. Tabor, attorney general, attorney for the plaintiffs herein,

Ordered and adjudged, that the judgment herein entered on the 5th day of June, 1889, overruling the demurrer to the complaint, with costs to the plaintiff in the sum of $45.25, be and the same hereby is affirmed.

And it is further ordered and adjudged, that The People of
16 the State of New York, the plaintiffs herein, recover of The New York, New Haven and Hartford Railroad Company, the said defendant, the cost of such appeal in the sum of $83.92.

And it is further ordered and adjudged, that the said defendant have leave, within thirty days after service of notice of entry of this judgment, and on payment of the costs of the judgment appealed from, and the costs by this judgment awarded, to serve an answer to the complaint herein if so advised.

To Page & Taft, Esqs., attorneys for defendant.

GENTLEMEN: You will please take notice that a judgment, of which the foregoing is a copy, was duly entered in the office of the

clerk of the county of New York on the 19th day of February, 1890.

Dated New York, February 19, 1890.

Yours, etc., CHAS. F. TABOR,
Attorney General, Plaintiffs' Attorney, Albany, N. Y.

17 Supreme Court, General Term, First Department, March 14th, 1890.

Present: Hon. Charles H. Van Brunt, P. J.; Hon. John R. Brady, Hon. Charles Daniels, justices.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The general term of the supreme court of the State of New York for the first department, before which the appeal taken herein from the interlocutory judgment rendered at a special term of this court on the 5th day of June, 1889, was heard, and under whose decision of said appeal said interlocutory judgment was affirmed and interlocutory judgment entered thereupon, from which said judgment it is now sought to appeal,

Do hereby certify that, in its opinion, the question arising therein is of sufficient importance to render decision by the court of appeals desirable before proceeding farther.

Dated New York, March, 1890.

18 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs, Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant, Appellant.

Notice of Appeal.

Take notice, that the above-named defendant, appellant, The New York, New Haven and Hartford Railroad Company does hereby appeal to the court of appeals from the interlocutory judgment of the general term of this court in this action, entered in the office of the clerk of said court on the nineteenth day of February, 1890, affirming the interlocutory judgment herein entered the 5th day of June, 1889, and from each and every part of said judgment.

Dated March 25th, 1890.

Yours, &c., PAGE & TAFT,
Attorneys for Defendant and Appellant.

To Charles Tabor, Esq., attorney general, attorney for plaintiffs and respondents; and Edward F. Reilly, Esq., clerk.

19 *Opinion of the General Term.*

Supreme Court, First Department, October, 1889.

Chas. H. Van Brunt, P. J.; John R. Brady, Chas. Daniels, JJ.

THE PEOPLE, &c.,
against
THE NEW YORK, N. H. & H. R. R. Co.

Appeal from interlocutory judgment overruling demurrer to the complaint.

H. C. Robinson, for appellant.
W. A. Poste, for respondent.

BRADY, *J.*:

This action was brought to recover penalties to the amount of $7,000 for alleged violations of the provisions of chap. 616 of the Laws of 1887, as amended by chap. 189 of the Laws of 1888. The defendant is a corporation organized and existing under the laws of the State of Connecticut. By an act of our legislature the company was authorized to extend its line to the city of New York, and has run its cars for many years into the city over the tracks of the N. Y. and Harlem Railroad Company, and its passenger trains run over twenty-six miles of railroad in this State. The acts of which violation is complained relate principally to the heating of steam passengers cars, and declare that:

"It shall not be lawful for any steam railroad, doing business in this State, after the first day of May, eighteen hun-
20 dred and eighty-eight, to heat its passenger cars, on other than mixed trains, by any stove or furnace kept inside of the car or suspended therefrom, except it may be lawful, in case of accident or other emergency, to temporarily use such stove or furnace with necessary fuel. Provided, that in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained, to be used only when the car is standing still. And provided also, that this act shall not apply to railroads less than fifty miles in length, nor to the use of stoves of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining-room cars."

And by the amendment of 1888 it was provided that:

"In special cases, the board of railroad commissioners may extend the time for a period not exceeding one year from November first, eighteen hundred and eighty-eight, for any steam railroad doing business in this State to heat its passenger cars by any stove or furnace kept inside the car or suspended therefrom.

"3. This act shall take effect immediately."

The defendant failed and refused to comply with the statute, and

"after the 1st day of November, 1888, heated and continues to heat its passenger cars run daily, as aforesaid, on said railroad, both on through trains and over that part lying within the State of New York on other than mixed trains, by stoves and furnaces kept within said cars, as the regular and usual method of heating said cars, and in cases other than those of accident and other emergency."

And it appears that the railroad commissioners have not extended the time of the defendant to heat its passenger cars by stoves or furnaces.

The complaint contains all the necessary allegations to present the claim urged against the defendant, namely, the penalties incurred by the alleged violations of the statute. The defendant demurred upon the ground that it appeared upon the face of
21 the complaint that it did not state facts sufficient to constitute a cause of action.

The defendant in maintenance of the demurrer insisted that the act was not intended to apply to cars on railroad lines without the State and that it would be unjust to compel the defendant to comply with its provisions for the reason that a construction was not to be given to a statute which would lead to unjust or inequitable results and further that the defendant was an interstate railroad, and if the construction of the act was doubtful it was to be construed in its favor.

The defendant, as is the wont of similar organizations, struggled with great zeal to avoid the alleged responsibility but without success. The various propositions mentioned although ably presented on defendant's behalf were overruled at special term, and from that decision this appeal was taken.

It is hardly necessary to say that the statutes under consideration were enacted in order to decrease the number of accidents resulting in the destruction of human life which had occurred under the system of car-heating by stoves and furnaces and which was justly condemned by public opinion. Indeed, it may be said that a substitute of some kind insuring greater safety was imperatively demanded.

It is not necessary to cite authorities to show that evils theretofore existing may be recalled and employed as factors in the effort to determine the intent of particular legislation; and, if it be obviously directed against such evils, it is fairly to be presumed that the remedy provided was designed to overcome them (see People *vs.* Supervisors, 43 N. Y., 132; Ayers *vs.* Lawrence, 59 N. Y., 195; Hudson I. Co. *vs.* Alger, 54 N. Y., 175).

Nor can there be any question about the right of the legislature to exercise its police power, especially where it relates to the preservation of the life, as was said by the U. S. Supreme Court, Slaughterhouse cases (16 Wall., 62):

"The police power is, and must be from its very nature,
22 incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly settled community." And the court cites with approval the case of Thorpe *vs.*

R. & B. R. R., 27 Vt., 149, which declared: "The police power extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State."

And this police power gives a "perfect right to the legislature to impose restraints and burdens upon persons and property in order to secure the general comfort, health and prosperity of the State and its citizens," "no question about it ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned."

Thorpe *vs.* R. & B. R. Co., 27 Vt., 149, *supra.*

Indeed, all property is held subject to the general police power of the State to regulate and control its use to secure the general safety and the public welfare.

Bertholf *vs.* O'Reilly, 74 N. Y., 509.
Munn *vs.* Illinois, 94 U. S., 113.

Having arrived at these conclusions, the only question for consideration is what was intended by the legislature in naming the limit of fifty miles as contained in the statute.

It is justly observed by plaintiff's counsel that a road fifty miles in length seldom if ever had a sleeping car attached to its trains. He says: "The terror that has been felt for the car stove is usually associated with the sleeping car, or with long trains of passenger coaches. On short lines, used only for local traffic, there are no long trains of coaches to be telescoped into each other."

The reasons are most abundant, however, in favor of the intention of the legislature to embrace within its acts all cars used by railroad companies in this State having fifty miles and upwards of
23 road in use, although not all within its limits. A reference to the statute itself seems to be conclusive upon that subject; § 1 provides expressly that "it shall not be lawful for any steam railroad doing business in this State," &c.

It is impossible for the defendant to escape from the truth and effect of the statement that it is doing business in this State. It has stations here from which its trains start and to which they return, and it is absolutely necessary, in order to accomplish the object of its present business, as declared, that its trains should go through a part of the State in order to carry persons to their destination out of the State and beyond fifty miles, who take their places in its coaches in the city of New York. And it was the intention of the legislature that these persons, especially if residents of the State, who leave it through the instrumentality of defendant's cars, should be afforded the protection which is given to all other passengers traveling within the State, by compelling the *the* use of a heating apparatus other than stoves and furnaces, no matter what the distance may be, provided it extend beyond fifty miles. It was thus designed to require the security of the passenger, his greater safety to exist at the start, and thus establish a protective system which might not otherwise be adopted. The language of the act to which attention has been called is therefore very emphatic, very compre-

hensive and very conclusive. "It shall not be lawful for any steam railroad doing business in this State," &c.

The defendant does business in this State, as already suggested. Its business, starting from another State, is to reach its depot here and land its passengers, for which service it receives compensation, and also to receive passengers at its stations here to be carried beyond the State line, and for a compensation proportioned, no doubt, to the distance its trains travel over the area of our State.

It seems unreasonable to argue that a person resident in this State who becomes a passenger on one of defendant's trains
24 to go to a point beyond its limits, should not have his safety secured as far as may be by the enforcement of the statute considered. If the railroad corporation seeks to enter the State and uses its territory for the purpose of traffic, it necessarily subjects itself to the laws of the State; and therefore if a road more than 50 miles in length, to the provision that when it starts it shall be in such a condition as our law requires. There can be no doubt that such a statute, expressive of such laws, should be liberally construed for the public good, and more, that the railroad company should cheerfully comply with its requirements. The defendant is doing business, it must also be said, within this State only by permission of the State, and of course such business may be regulated in its operation within the State or driven from it by the act of sovereignty.

The acts considered are in their nature police regulations, and are not an infringement of interstate commerce or of the Federal Constitution. It is the exercise of a power intended to promote the safety and comfort of our citizens and traveling public. It is reasonable and salutary, tending to increase the passenger traffic over the defendant's road, and, therefore, benefit it, and it embraces a subject as to which Congress has made no provision. There can be no doubt that in such a case the State may adopt the necessary measures by legislation (see Sherlock *vs.* Alling, 93 U. S., 99; Smith *vs.* Alabama, 124 U. S., 465; Nashville, &c., R. R. Co. *vs.* Alabama, 128 U. S., 96).

It may be that this somewhat elaborate consideration of the subject is a waste of time, but the various propositions of the learned counsel of defendant, and arising from respect for him, have rendered it necessary.

For these reasons, the judgment should be affirmed with costs.

I concur.
CHAS. DANIELS.

Concur.
C. H. V. B.

25 At a special term of the supreme court of the State of New York, held at the court-house in the city of New York on the 28th day of October, 1890.

Present: The Hon. George L. Ingraham, justice.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

On reading and filing the remittitur from the court of appeals to the supreme court directing that the order of the general term in this action entered in the office of the clerk of the county of New York on the nineteenth day of February, 1890, be affirmed, with leave to defendant to answer within twenty days on payment of costs,

Now, on motion of Mr. Charles F. Tabor, attorney general and attorney for plaintiffs, respondents,

Ordered, that said decision be and the same hereby is made the judgment of the supreme court, and that judgment be entered herein affirming said order with costs, with leave to defendant to answer within twenty days on payment of costs.

26 Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

An appeal having been heretofore taken to the court of appeals from the order or judgment of the general term of the supreme court for the first department, in this action, and entered in the office of the clerk of the city and county of New York on the 19th day of February, 1890, and said order or judgment having been affirmed by said court as appears by their remittitur which is this day filed,

Now, on reading and filing said remittitur and the order of the special term of the supreme court held by the Hon. George L. Ingraham, justice of this court, dated October 28th, 1890, and on motion of Mr. Charles F. Tabor, attorney general and attorney for plaintiffs,

Ordered and decreed, that said order or judgment be and hereby is affirmed, with leave to defendant to answer within twenty days on payment of one hundred and thirteen $\frac{37}{100}$ dollars.

Judgment, October 28, 1890.

P. JOSEPH SCULLY, *Clerk.*

27 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The defendant above named, by Page & Taft, its attorneys, answers the complaint herein as follows:

I.

It denies, upon its information and belief, the allegations contained in the fifth paragraph of the complaint, being the paragraph which commences in the twelfth folio thereof, and which is as follows: "And the said plaintiffs, The People of the State of New York, further aver, upon their information and belief, that the said defendant The New York, New Haven and Hartford Railroad Company, unlawfully and against the form of the statute above set forth, has, on each and every day since and after the first day of November, 1888, heated and continued to heat its passenger cars run daily as aforesaid on said railroad, both on through trains and over that part thereof lying within the State of New York on other than mixed trains, by stoves and furnaces kept within said cars, as the regular and usual method of heating said cars, and in other than those of accident and other emergency."

II.

It also denies the allegations contained in the sixth para-
28 graph of the complaint, which commences in the thirteenth folio thereof, and is as follows: "Whereby the said defendant has become indebted and incurred certain penalties to the said plaintiffs, The People of the State of New York, as follows: A general penalty in the sum of one thousand dollars, and further penalties in the sum of one hundred dollars for each and every day on which it has operated its passenger cars with stoves and furnaces as aforesaid, after the first day of November, 1888, sixty days in all, which said futher penalties aggregate the sum of six thousand dollars."

III.

The defendant further alleges that it is a corporation organized and existing under the laws of the State of Connecticut, and that it was authorized to extend its railroad from the Connecticut State line to the New York and Harlem railroad at or near Williams Bridge, by an act of the legislature of the State of New York, passed May 11th, 1846, and entitled "An act to authorize the New York and New Haven railroad to extend their railroad from the Connecticut line to the New York and Harlem River railroad." That by an act of the legislature of the State of New York, passed March 29th, 1848, and entitled "An act amending an act entitled 'An act in relation to the New York and Harlem Railroad Company,' passed May 7, 1840, and the acts amending the same," the said defendant was authorized to run its engines and cars for passengers over the road of the said New York and Harlem railroad from the junction of the two roads in New York upon such terms as should be agreed upon between the said two companies, and since the passage of the said act the said defendant has run its cars and engines over the tracks of the New York and Harlem Railroad Company into the city of New York, under an agreement made with the latter company. Under an act of the legisla-

ture of the State of Connecticut, passed in July, 1871, being chapter 129 of the Connecticut Public Acts of 1871, the
29 name of the said New York and New Haven railroad, being the defendant, became and ever since has been the New York, New Haven and Hartford Railroad Company. That the length of the road of the said defendant within this State, and extending from the Connecticut State line to Williams Bridge, is between fourteen and fifteen miles, and the length of the New York and Harlem railroad over which the cars and engines of the defendant run in accordance with the agreement, made with the New York and Harlem Railroad Company as aforesaid, is between eleven and twelve miles. That the defendant above named operated altogether at the time of the commencement of this action, five hundred and twenty-seven and one-half (527½) miles of railroad, of which four hundred and twenty-four (424) miles were in the State of Connecticut; seventy-seven and a half (77½) miles in the State of Massachusetts, and twenty-six (26) miles in the State of New York. That the defendant runs over one hundred passenger trains daily in both directions, and only three of these trains do not go into the State of Connecticut, and most of them run between the State of New York and the State of Connecticut.

IV.

The defendant further alleges that it is subject to the supervision of the board of railroad commissioners of the State of Connecticut, appointed by virtue of an act of the legislature of the State of Connecticut, approved July 1, 1853, and entitled "An act to prevent injuries and the destruction of life upon railroads and by railroad trains," as now amended by the provisions of the acts of the legislature of the said State of Connecticut, contained in the Revised Laws of Connecticut of the Year 1888, in title LXVI, chapters CCX–CCXXIII, sections 3413, 3617 thereof.

That the said State has, through its said board and by virtue of the powers given them by said acts, recommended that the
30 present system of heating cars by heaters within the cars be retained until a better method shall be discovered, and have condemned the use of steam in heating cars as neither safe nor practicable.

The defendant is informed and believes that no system of heating cars, yet discovered, is safer than the method now in use upon the defendant's cars.

For a further and separate defense, the defendant, referring to and making a part of this defense the allegations contained in third and fourth paragraphs of this answer above set forth, alleges, upon its information and belief, that the acts of the legislature, under the authority of which this action is maintained, and which are alleged in the complaint as being chapter 616 of the Laws of 1887, and chapter 189 of the Laws of 1888, are unconstitutional and void, so far as they are intended to apply to this defendant, in that they attempt to regulate commerce between two States of the United

States in contravention of the provision of section 8 of the Constitution of the United States.

Wherefore, the defendant demands that the complaint herein be dismissed with costs.

PAGE & TAFT,
Attorneys for Defendant, 45 William Street, New York City.

CITY AND COUNTY OF NEW YORK, *ss:*

William L. Squier, of New Haven, Conn., being duly sworn, says that he is an officer, to wit, the treasurer of The New York, New Haven and Hartford Railroad Company, the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

31 He further says that the reason this verification is not made by the defendant is that it is a foreign corporation, organized under the laws of the State of Connecticut.

That the ground of deponent's belief as to the allegations not made upon his knowledge is information received from statements made to him by Henry W. Taft, one of the attorneys for the above-named defendant, and by William E. Barnett, the executive secretary of the defendant, and the person charged by the said defendant with the duty of investigating, and who has investigated, the facts so alleged, and who is not within the State of New York.

WM. L. SQUIRE.

Sworn to before me this 3d day of November, 1890.

A. S. MAY,
[SEAL.] *Notary Public, N. Y. Co.*

STATE OF CONNECTICUT, }
County of New Haven, } *ss:*

COUNTY CLERK'S OFFICE.

I, Edward A. Anketell, clerk of the superior court and *ex officio* of the county court, the same being courts of record, and authorized by law to certify the records of said county court, within and for New Haven county, and keeper of the seal thereof and of the commission of justices of the peace and of the commissioners of the superior court for said county, and of notaries public, hereby certify that A. S. May, Esquire, was on the 3d day of November, 1890, ever since has been and now is a notary public within and for and residing in said county, duly appointed, commissioned and sworn, having full power and authority by the laws of this State to take the acknowledgment of deeds and other instruments and to certify the same; also, to administer oaths, to take affidavits and depositions out of court and to give certificates thereof; that full

32 faith and credit may and ought to be given to his official acts and attestations; that the signature to the instrument hereto annexed, purporting to be his, I believe to be his genuine official

signature; that I am well acquainted with his handwriting, and that said instrument is executed, acknowledged and duly authenticated according to the laws of this State.

In testimony whereof, I hereunto set my hand and [SEAL.] affix the seal of said court at New Haven, in said county and State, on the 3d day of November, A. D. 1890.

EDWARD A. ANKETELL, *Clerk.*

Supreme Court, County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs, *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant. } Amended Complaint.

The People of the State of New York, plaintiffs above named, by their attorney general, for an amended complaint in this action complain of the said defendant The New York, New Haven and Hartford Railroad Company, and aver:

That the said New York, New Haven and Hartford Railroad Company is a foreign corporation duly organized and incorporated under the statutes of the State of Connecticut, and is now
33 engaged, and for several years last past has been engaged, in business in the State of New York, and in operating a steam railroad between the city of Hartford, in the State of Connecticut, and the city of New York, in the State of New York, over a line or route described as follows, to wit: From the said city of Hartford southwesterly thirty-six miles to the city of New Haven, in the State of Connecticut; thence westerly and southwesterly through the territory of the State of Connecticut forty-six miles to the boundary line between the States of New York and Connecticut; and thence southwesterly through the territory of the State of New York twenty-six miles to the Grand Central station in the city of New York.

That in the operation of such railroad such company runs trains of passenger cars over the whole of such route by steam power daily, including through trains from New York city to Hartford, and from Hartford to New York city.

Said plaintiffs further aver that on the 18th day of June, 1887, the legislature of the State of New York duly enacted a statute known as chapter 616 of the Laws of 1887, and entitled "An act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto," and that on the 27th day of April, 1888, such legislature duly enacted another statute known as chapter 189 of the Laws of 1888, entitled "An act to amend chapter 616, Laws of 1886, entitled 'An act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto.'"

And the plaintiffs further aver, upon information and belief, that

the defendant did on the 2d day of November, 1888, heat its passenger cars run daily as aforesaid on its said railroad, both on through trains and over that part thereof lying within the State of New York, on other than mixed trains, by stoves and furnaces kept within said cars as the regular and usual method of heating
34 said cars, and in cases other than those of accident or other emergency, and that the board of railroad commissioners of the State of New York has not extended the time of the defendant to heat its passenger cars by any stove or furnace kept inside of such cars; that on the 3d day of November, 1888, the defendant did so heat its passenger cars run as hereinbefore mentioned, and each and every day since the 3d day of November, 1888, it has so heated and continued to heat its passenger cars so run as hereinbefore alleged down to and including the 31st day of December, 1888.

The plaintiffs further aver that the defendant by heating and continuing to heat its said passenger cars, as hereinbefore alleged, has violated the provisions of the statutes of the State of New York hereinbefore referred to, to wit, chapter 616 of the Laws of 1887, and chapter 198 of the Laws of 1888, and has thereby incurred the penalties prescribed by such statutes and become indebted to the plaintiffs in the amount of such penalties, to wit, in the sum of one thousand dollars, being the amount of the general penalty prescribed for the violation of such statutes, and in the further sum of six thousand dollars, being the amount of the further penalties incurred for such violation for each and every day on which it has operated its passenger cars with stoves and furnaces as aforesaid, after the first day of November, 1888, being sixty days in all.

Wherefore the plaintiffs demand judgment against the defendant for $7,000 with interest thereon from the 31st day of December, 1888, and the cost of the action.

ATTORNEY GENERAL,
Attorney for Plaintiffs.

Office and post-office address, Capitol, Albany, N. Y.

STATE OF NEW YORK, } ss.:
County of Albany, }

Charles F. Tabor, being duly sworn, says that he is the attorney general of the State of New York, and one of the plaintiffs
35 herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

CHARLES F. TABOR.

Subscribed and sworn to before me this 16th day of December, 1888.

WALTER L. CHILDS,
Notary Public, Albany Co., N. Y.

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The defendant above named, by Page & Taft, its attorneys, answers the amended complaint herein as follows:

I.

It denies, upon its information and belief, the allegations contained in the fourth paragraph of the amended complaint, being the paragraph which commences in the fifth folio thereof, and which is as follows:

"And the plaintiffs further aver, upon information and belief, that the defendants did, on the 2d day of November, 1888, heat its
36 passenger cars, run daily as aforesaid on its said railroad, both on through trains and over that part thereof lying within the State of New York, on other than mixed trains, by stoves and furnaces kept within said cars as the regular and usual method of heating said cars, and in cases other than those of accident or other emergency; and that the board of railroad commissioners of the State of New York has not extended the time of the defendant to heat its passenger cars by any stove or furnace kept inside of such cars; that on the 3d day of November, 1888, the defendant did so heat its passenger cars run as hereinbefore mentioned, and on each and every day since the 3d day of November, 1888, it has so heated and continued to heat its passenger cars so run as hereinbefore alleged down to and including the 31st day of December, 1888."

II.

It also denies the allegations contained in the fifth paragraph of the said amended complaint, being the paragraph which commences in the sixth folio thereof, and which is as follows:

"The plaintiffs further aver that the defendant, by heating and continuing to heat its said passenger cars as hereinbefore alleged, has violated the provisions of the statutes of the State of New York hereinbefore referred to, to wit, chapter 616 of the Laws of 1887 and chapter 198 of the Laws of 1888, and has thereby incurred the penalties prescribed by such statutes and become indebted to the plaintiffs in the amount of such penalties, to wit, in the sum of one thousand dollars, being the amount of the general penalty prescribed for the violation of such statutes, and in the further sum of six thousand dollars, being the amount of the further penalties incurred for such violation for each and every day on which it has operated its passenger cars with stoves and furnaces as aforesaid after the first day of November, 1888, being 60 days in all."

37

III.

The defendant further alleges that it is a corporation organized and existing under the laws of the State of Connecticut, and that it was authorized to extend its railroad from the Connecticut State line to the New York and Harlem railroad, at or near Williams Bridge, by an act of the legislature of the State of New York, passed May 11th, 1846, and entitled, "An act to authorize the New York and New Haven railroad to extend their railroad from the Connecticut line to the New York and Harlem River railroad." That by an act of the legislature of the State of New York, passed March 29th, 1848, and entitled "An act amending an act entitled 'An act in relation to the New York and Harlem Railroad Company,' passed May 7th, 1840, and the acts amending the same," the said defendant was authorized to run its engines and cars for passengers over the road of the said New York and Harlem railroad from the junction of the two roads in New York upon such terms as should be agreed upon between the said two companies, and since the passage of the said act the said defendant has run its cars and engines over the tracks of the New York and Harlem Railroad Company into the city of New York under an agreement made with the latter company. Under an act of the legislature of the State of Connecticut, passed in July, 1871, being chapter 129 of the Connecticut Public Acts of 1871, the name of the said New York and New Haven railroad, being the defendant, became and ever since has been the New York, New Haven and Hartford Railroad Company. That the length of the road of the said defendant within this State and extending from the Connecticut State line to Williams Bridge is between fourteen and fifteen miles, and the length of the New York and Harlem railroad, over which the cars and engines of the defendant run in accordance with the agreement made with the New

38 York and Harlem Railroad Company, as aforesaid, is between eleven and twelve miles. That the defendant above named operated altogether at the time of the commencement of this action five hundred and twenty-seven and one-half (527½) miles of railroad, of which four hundred and twenty-four (424) miles were in the State of Connecticut, seventy-seven and a half (77½) miles in the State of Massachusetts and twenty-six miles (26) in the State of New York. That the defendant runs over one hundred passenger trains daily in both directions and only three of these trains do not go into the State of Connecticut, and most of them run between the State of New York and the State of Connecticut.

IV.

The defendant further alleges that it is subject to the supervision of the board of railroad commissioners of the State of Connecticut, appointed by virtue of an act of the legislature of the State of Connecticut, approved July 1, 1853, and entitled "An act to prevent injuries and the destruction of life upon railroads and by railroad trains," as now amended by the provisions of the acts of the legislature of the said State of Connecticut, contained in the Revised

Laws of Connecticut of the Year 1888 in title LXVI, chapters CCX–CCXXIII, sections 3413, 3617 thereof.

That the said State has through its said board and by virtue of the powers given them by said acts recommended that the present system of heating cars by heaters within the cars be retained until a better method shall be discovered, and have condemned the use of steam in heating cars as neither safe nor practicable.

The defendant is informed and believes that no system of heating cars yet discovered is safer than the method now in use upon the defendant's cars.

For a further and separate defense, the defendant, referring to and making a part of this defense the allegations contained in the third and fourth paragraphs of this answer to the amended complaint above set forth, alleges, upon its information and belief, that the acts of the legislature under the authority of which this
39 action is maintained and which are alleged in the amended complaint as being chapter 616 of the Laws of 1887, and chapter 189 of the Laws of 1888, are unconstitutional and void so far as they are intended to apply to this defendant in that they attempt to regulate commerce between two States of the United States in contravention of the provisions of section 8 of the Constitution of the United States.

Wherefore, the defendant demands that the complaint herein be dismissed with costs.

PAGE & TAFT,
Attorneys for Defendant, 45 *Williams St., New York.*

CITY AND COUNTY OF NEW HAVEN, *ss:*

William L. Squire, being duly sworn, says that he is an officer, to wit, the treasurer, of The New York, New Haven and Hartford Railroad Company, the defendant herein; that he has read the foregoing answer to the amended complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

He further says that the reason this verification is not made by the defendant is that it is a foreign corporation organized under the laws of the State of Connecticut.

That the ground of deponent's belief as to the allegations not made upon his knowledge is information received from statements made to him by Henry W. Taft, one of the attorneys for the above-named defendant, and by William E. Barnett, the executive secretary of the defendant, and the person charged by the said
40 defendant with the duty of investigation, and who has investigated the facts so alleged, and who is not within the State of New York.

WILLIAM L. SQUIRE.

Sworn to before me this 2d day of January, 1891.

A. S. MAY,
[SEAL.] *Notary Public, N. H. Co.*

STATE OF CONNECTICUT, } ss:
County of New Haven, }

COUNTY CLERK'S OFFICE.

I, Edward A. Anketell, clerk of the superior court, and *ex officio* of the county court, the same being courts of record, and authorized by law to certify the records of said county court, within and for New Haven county, and keeper of the seal thereof, and of the commission of justices of the peace, and of the commissioners of the superior court for said county, and of notaries public, hereby certify, that A. S. May, Esquire, was on the 2d day of January, 1891, ever since has been and now is a notary public within and for and residing in said county, duly appointed, commissioned and sworn, having full power and authority by the laws of this State to take the acknowledgment of deeds and other instruments and to certify the same; also to administer oaths, to take affidavits and depositions out of court, and to give certificates thereof; that full faith and credit may and ought to be given to his official acts and attestations; that the signature to the instrument hereto annexed, purporting to be his, I believe to be his genuine official signature; that I am well acquainted with his handwriting, and that said instrument is executed, acknowledged and duly authenticated according to the laws of this State.

In testimony whereof I hereunto set my hand and affix the seal of said court, at New Haven, in said county and State, on this 3d day of January, A. D. 1891.

[SEAL.]

EDWARD A. ANKETELL, *Clerk.*

41 Supreme Court, Circuit, Part IV, Oct. 7, 1891.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE NEW YORK, NEW HAVEN AND HARTFORD R. R. Co. } Present: Hon. Geo. C. Barrett.

I hereby certify that this cause was this day tried by the court and a jury, and a verdict rendered therein by direction of the court, for the plaintiff for the sum of $7,000, five per cent. allowance granted, thirty days' stay after notice of entry of judgment.

LEONARD A. GIEGERICH, *Clerk.*

Supreme Court, New York County, Circuit.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Judgment.

The issues in this action having been brought on for trial before Mr. Justice Barrett and a jury, at a circuit court held on the 7th

day of October, 1891, at the county court-house in the city of
42 New York; and a verdict having been rendered in favor of the plaintiffs and against the defendant for the sum of $7,000,

Now, on motion of Charles F. Tabor, attorney general, attorney for the plaintiffs herein,

It is adjudged that the plaintiffs herein recover of the defendant the sum of $7,000, together with the sum of $479.81 costs, disbursements and allowance in this action, in all $7,479.81, and have execution therefor. Judgment October 17, 1891.

LEONARD A. GIEGERICH, *Clerk.*

SIR: Take notice that the within is a copy of judgment duly filed and entered in the office of the clerk of New York county on the 17th day of October, 1891.

Yours, etc.,

CHAS. F. TABOR,
Attorney General, Attorney for Plaintiffs.

To Page & Taft, Esqrs., attorneys for defendant, 45 William street, New York city.

This action came on for trial before Honorable George C. Barrett, presiding, and a jury, on the 7th day of October, 1891.

The following are the proceedings had and all the evidence introduced upon the trial:

The Hon. Charles F. Tabor, attorney general, appeared for the plaintiff, by Hon. Isaac H. Maynard and William A. Poste, Esq., and John M. Bowers, Esq., and Page & Taft appeared for the defendant.

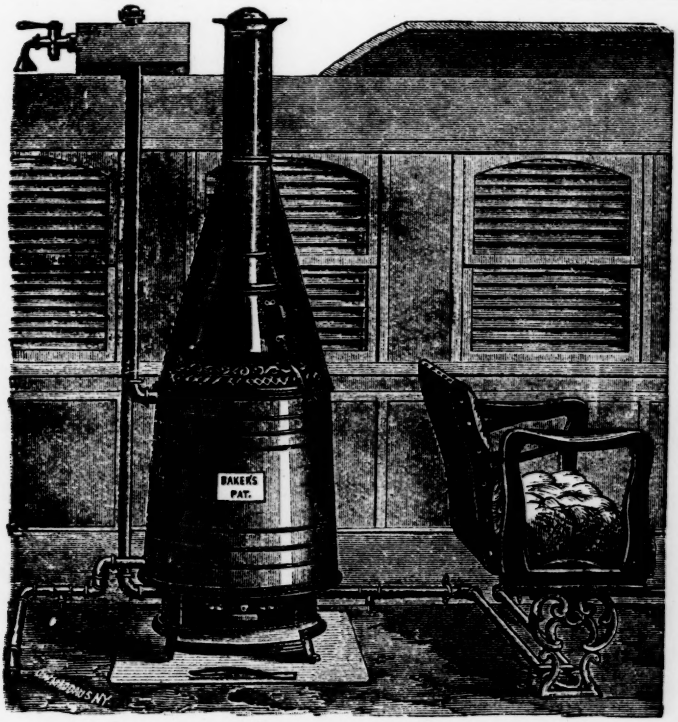
A jury was called, and, proving satisfactory, the case proceeded.

Mr. Maynard opens for the plaintiff as follows:

43 This action is brought by the attorney general on behalf of the people to recover penalties to the amount of $7,000, which are alleged to have been incurred by the defendant, The N. Y., N. H. & H. R. R. Co., in consequence of a violation by them of chapter 616 of the Laws of the State of New York of 1887, and chapter 198 of the Laws of 1888, relating to the method of heating passenger cars by railroad companies. The statute imposes a penalty of $1,000 for the first offense and $100 for every day after that the violation is continued. This action is brought to recover the penalties incurred between the 1st day of November, 1888, to and including the 31st day of December of the same year. It is conceded that there is no disputed question of fact here, and there will have to be, probably, a direction of a verdict one way or the other. As the court will probably recollect, this statute applies to all railroad companies operating a railroad exceeding fifty miles in length. The defendant company operates a railroad of about 600 miles in length, but only about 25 or 26 miles of the line operated by the road is within the State of New York. When this action was brought and the complaint served the defendant demurred to the complaint upon the grounds that it was not amenable to this statute, for the reason that it was not operating within the State of New

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Diagram A.



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179

180

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181 **Diagram B.**

182

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183

184



Fig. 12.—View of Fire-Inclosure, showing Outdoor Air Admission.

York a line of road 50 miles in length. That demurrer was overruled by Justice O'Brien at special term, and, upon appeal to the general term, that decision was affirmed, the opinion being written by Justice Brady. The defendant then appealed to the court of appeals, which affirmed the order of the general term upon the opinion of the general term. The defendant then obtained leave to put in an answer, and it has put in an answer formally denying that it has heated its cars during the period mentioned in the complaint with a stove or furnace kept or used inside of the cars or suspended therefrom. There is no dispute as to the method of heating. The cars have been heated by what is known as the Baker heater, and we have a stipulation from the defendant here that the cars were heated in every day specified in the complaint with
44 a Baker heater. We have also a stipulation from the defendant containing a description of the Baker heater and the method by which it is operated. Without occupying the attention of the court any further, I will read these stipulations:

First, we have a stipulation dated May 19, 1891: "It is hereby conceded, for the purposes of the trial of this action, that the board of railroad commissioners of the State of New York never extended the time for the defendant to heat its passenger cars by any stove or furnace kept inside the car or suspended therefrom."

We have another stipulation dated April 24, 1891, as follows: "It is stipulated that, upon the trial of this action, the defendant will concede that, upon each of the days specified in the complaint, its passenger cars were run, on other than mixed trains, over that portion of the railroad operated by it in this State, and such cars were heated by what is known as the 'Baker heater,' one of which was kept inside of such cars."

We have a further stipulation to this effect: "It is stipulated for the purposes of the trial of this action that the 'Baker heater,' by which the passenger cars of the defendant were heated at the times mentioned in the complaint, is constructed of iron, and when put up ready for use in a car is correctly represented by diagram 'A,' hereto annexed.

(Here follows diagram marked p. 45.)

"Within the heater is a fire-pot, cylindrical in form, surrounded by a coil of iron pipe. The manner in which the heater is operated is as follows: A fire is built in the fire-pot and is fed with anthracite coal through an opening in the top of the fire-pot. The coil of pipe is connected with a reservoir of water. The water in the coil becomes heated and passes out of the coil into pipes which are led and distributed through the car in which the heater is placed. Diagram 'B,' hereto annexed,

(Here follows diagram marked p. 46.)

is a sectional view representing generally the interior of the heater in operation.

"Diagram 'C,' numbers 1 to 50 inclusive, shows the different parts and attachments of the heater."

(Here follow diagrams marked pp. 47, 48, 49, 50, 51, & 52.)

53 All the other allegations in the complaint are not denied, but are admitted. With this statement we rest our case.

Mr. BOWERS: We ask the court to dismiss the complaint on the ground—

1st. That no cause of action has been made out in favor of the plaintiff against the defendant.

2d. That chapter 616 of the Laws of 1887, and the various acts amendatory thereof, are unconstitutional and void.

3d. That chapter 616 of the Laws of 1887, and the various acts amendatory thereof are unconstitutional and void under the Constitution of the United States, and especially under section 8 of article 1 of such Constitution, in that they interfere with interstate commerce.

Also on the further ground that said acts are unconstitutional and void under the fourteenth amendment of the Constitution of the United States, in that they deny to the New York, New Haven and Hartford R. R. Co., a person within the jurisdiction of the State of New York the equal protection of the laws, and that they deprive said corporation of property without due process of law.

Also on the further ground that the said acts in question do not apply to a railroad whose line of road in this State is less than fifty miles in length—the fact being as disclosed by the pleadings that the line of road of the New York, New Haven and Hartford R. R. in this State is less than fifty miles in length.

Also on the further ground that the court can take judicial notice of the fact that the New York, New Haven and Hartford R. R. Co. was, at the date of the incurring of the penalties charged in the complaint, engaged in interstate commerce, and that therefore the plaintiff is not entitled to maintain this action.

Motion denied. Exception taken by defendant.

54 DEFENDANT'S COUNSEL: I offer in evidence several acts of the legislature of the State of Connecticut by which the New York and New Haven railroad, and the New Haven and Hartford railroad, were incorporated.

Also the act consolidating them into the present defendant, The New Haven, New York and Hartford R. R. Co.

The book containing the said acts was marked "Exhibit 1."

DEFENDANT'S COUNSEL: It is marked with permission to the defendants to insert in the record such acts as they deem necessary to the case.

We also offer in evidence an act of the legislature of the State of New York, passed May 11, 1846, entitled "An act to authorize the New York and New Haven railroad to extend its railroad from the Connecticut line to the New York and Harlem River R. R."

Also an act of the legislature of the State of New York, passed May 29, 1848, entitled "An act amending an act, entitled An act in

185

Diagram C.

PARTS OF THE

ORIGINAL BAKER CAR HEATER

FOR

REPAIRS AND RENEWALS.

186

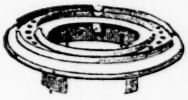
No. 1.

Base of Stove and Part of Ash Pit.



No. 2.

Ash Pit.



No. 3.

Grate.

13 inches diameter.



No. 4.

Fire Pot.

(Cast Iron.)



187

No. 5.

Inside Casing.

(Wrought Iron.)



188

No. 6.

Outside Casing.

(Russian Iro.)



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189

No. 7.

Ash Pit Door.

(Wrought Iron.)



190

No. 8.

Cast Iron Top.



No. 9.

Safety Grate.

191



No. 10.

Safety Grate Spring.



192

No. 11.

Heat Guard.

(Russia Iron.)



No. 12.

Base of Smoke Flue.

(Russia Iron.)



No. 13.

Feed Door.

(Russia Iron.)



No. 14.

Feed Door Handle.



No. 15.

Latch for Safety Grate.



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No. 16.

Rocking Bar for Grate.



No. 17.

Ash Pit Door Handle.



No. 18.

Ring for Russia Iron Top.

(Cast Iron. Two Sizes.)

9¾ in., Largest Inside Diameter.
14¾ " " " "



No. 19.

Grate Shaker.



No. 20.

Coil for Stove.

Feed on Left Side. Return on Back of Stove.



194

No. 21.

Coil for Stove.

Feed Outlet is over Return Outlet. To go in any Position.



195

No. 22.

Coil for Stove.

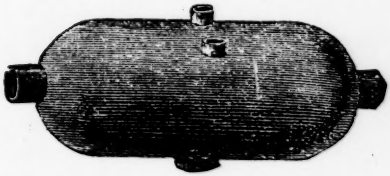
Feed on Right Side. Return on Back of Stove.



No. 23.

Circulating Drum, Cast Iron.

196



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People of My

197

No. 24.

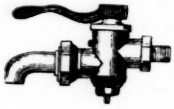
Drum Support.



198

No. 25.

Combination Cock.



199

No. 26.

Safety Valve.



No. 27.

Ball for Safety Valve.



No. 28.

Filling Funnel.



No. 29.

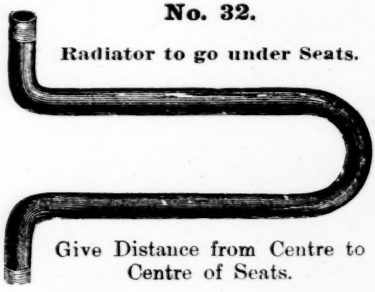
Drum Cover.



200

No. 32.

Radiator to go under Seats.



Give Distance from Centre to Centre of Seats.

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v.
People of My.

201

No. 33.

Stand for Open Return-Bend Radiator.



No. 34.

Support for Pipes and Radiators.

Cast Iron. Four Sizes. Distance from Floor to Centre of Pipes, 2, 2½, 3¼ and 5 inches.



No. 35.

Radiator Stand.

Wrought Iron, Distance from Floor to Centre of Pipes, 3½ inches.



No. 36.

Radiator Stand.

Wrought Iron. Distance from Floor to Centre of Pipes, 2 inches.



NO. 37.

Two Pipe Strap and Back.

Wrought Iron. These are made for any number of Pipes. Specify the number of Pipes.



202

No. 38.

Single Pipe Strap.

Wrought Iron. Also made in Cast Iron, same Pattern.



203

No. 40.

Close Return Bend.

1¼ in.
Right Hand or Left Hand Threads.



204

No. 41.

Open Return Bend.

1¼ in.
Right Hand Threads.



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People of N.Y.

205

No. 42.

Draw-off Cock.

$\frac{3}{4}$ in.  $\frac{3}{4}$ in.

206

No. 43.

Elbow.

Right Hand Threads, and Right and Left Threads.

 $1\frac{1}{4}$ in.

$1\frac{1}{4}$ in.

207

No. 44.

Reducing Tee.

$1\frac{1}{4}$ in.

$\frac{3}{4}$ in.  $1\frac{1}{4}$ in.

208

No. 45.

Reducing Tee.

$\frac{1}{2}$ in.

$1\frac{1}{4}$ in.  $1\frac{1}{4}$ in.

No. 46.

Reducing Tee.

$\frac{3}{4}$ in.

$1\frac{1}{4}$ in.  $1\frac{1}{4}$ in.

No. 47.

Close Nipples.

$1\frac{1}{4}$, $\frac{3}{4}$, $\frac{1}{2}$ inch.



No. 48.

Coupling.

Cast Iron. Right Hand Threads or Right and Left Threads.

$1\frac{1}{4}$ in.  $1\frac{1}{4}$ in.

No. 49.

Bushing.

$1\frac{1}{4}$ x $\frac{3}{4}$ inch.



No. 50.

Plug.

$1\frac{1}{4}$, $\frac{3}{4}$, $\frac{1}{2}$ inch.



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v.
People of My.
} p. 52

relation to the New York and Harlem Railroad Co., passed May 7, 1840," with the acts amending the same; by which latter act the defendant was authorized to run its cars for passengers over the New York and Harlem railroad. The following are the acts referred to above:

(*Conn. Public Acts*, 1871, *Chap.* 129.)

"An act in addition to an act entitled 'An act concerning communities and corporations.'

Whereas, for their common benefit and interest, and for the convenience and benefit of the public, the New York and New Haven Railroad Company and the Hartford and New Haven Railroad Company did on the third day of August, 1870, enter into certain perpetual covenants and agreements, under authority of
55 and in accordance with the statute laws of this State, which covenants have been fully adopted and approved by the unanimous vote of the stockholders of said Hartford and New Haven Railroad Company, and by the vote, almost unanimous, of the stockholders of said New York and New Haven Railroad Company, which covenants and agreements have merged the entire railways and properties of said corporations into a joint estate, and have brought the management of both of said corporations under a common board of managers, and have secured perpetually the income of both said roads to be a common fund, for the expenses and liabilities and dividends of both companies, and as it would be for the convenience and best interest of said companies and of the traveling and shipping public having dealings with them that said companies should have a single corporate existence. Therefore, be it enacted, etc.:

SECTION 1. The Hartford and New Haven Railroad Company may sell, transfer, merge and consolidate its corporate rights, powers, and estate, to, into and with the New York and New Haven Railroad Company upon such consideration, terms, stipulations and conditions, as may be agreed upon between said corporations, and are authorized by the provisions of this act.

SEC. 2. The directors of said corporation may, in the names and under the seals of their respective corporations, enter into joint articles of agreement for the sale, transfer, purchase, merger, and consolidation hereby authorized, prescribing the considerations, terms and conditions thereof, the mode of effecting such transfer, merger and consolidation, the name of such consolidated corporation, and the number of directors thereof, which shall not be more than twenty-one, nor less than nine, a majority of whom shall be citizens residing in this State, and the persons who shall act as such directors until the next regular election of directors by said consolidated corporation, the number of shares and the amount of the capital stock of said consolidated corporations, which shall
56 not exceed the present authorized capital of said companies, the manner of converting the capital stocks of said original corporations into the capital stock of the consolidated corporation

and the compensation to be made for fractional parts of shares, and such other matters, things and details as may be necessary or proper to effect the purposes and merger aforesaid.

SEC. 3. Said agreement of the directors hereinbefore authorized shall be submitted to the stockholders of each of said corporations separately, at a meeting especially called for that purpose, and if approved by a vote of at least two-thirds of the stock represented at each of the said meetings, and not otherwise, said agreement made by said directors shall become the agreement of said corporations respectively, and a certified copy thereof, together with a certificate of the adoption of said agreement by the stockholders of said respective corporations, under the hand of the secretary of each of said corporations, shall be filed in the office of the secretary of this State, and thereupon said Hartford and New Haven Railroad Company shall be and become merged and consolidated in and with said New York and New Haven Railroad Company; and said consolidated corporation shall continue a body politic and corporate, under the corporate name of the New York, New Haven and Hartford Railroad Company, and shall possess, hold and enjoy all the rights, powers, franchises, and privileges theretofore vested in either of said corporations; and all the property, real and personal, including all rights of way and rights of action, belonging to either of said corporations, shall be deemed and taken to be transferred to and vested in the corporation into which such merger is made, without further act or deed to be done, executed or performed; provided, that nothing in this act shall be so construed as to authorize said last-named corporation to merge, consolidate, or make joint stock with any other railroad company, or make perpetual lease with any such railroad, without consent of the General Assembly first had and obtained.

57 SEC. 4. All rights of creditors and all liens upon the property of either of said original corporations shall continue unimpaired, and all debts, contracts and liabilities of either of said original corporations shall attach to and become binding upon such consolidated company, and may be enforced in the same manner, and to the same extent as if contracted or incurred by said latter corporation; and said original corporations shall at all times be taken to be in existence in their original names and capacities for the enforcement of any and all claims in favor or against either of said corporations.

SEC. 5. If any stockholder of either of said original corporations shall, at said meeting of stockholders, or within sixty days thereafter, object to such proposed transfer and merger, and signify to such corporation his objections in writing, such stockholder, or said consolidated corporation may, if said contract of merger shall have been approved and taken effect as aforesaid, at any time thereafter, apply by petition in writing to any judge of the superior court to appoint one or more disinterested persons to appraise the value of the shares or share of such stockholder, and said judge, reasonable notice first being given to the adverse party, which notice said judge is authorized to prescribe, shall appoint one or more disinterested

persons to make such appraisal; and said person or persons so appointed shall under oath appraise the value of said stock and make return thereof in writing, under his or their hands, to said judge, who shall lodge the same with the clerk of the superior court in the county in which such application shall be made, and said clerk shall record the same; and when so returned and recorded, such appraisement shall have the effect of a judgment, and execution may issue therefor in favor of such stockholder against said corporation; and said appraisement shall be paid in full by said corporation to said stockholder, if to be found within this State; if not, then to the treasurer of the State, who is hereby authorized to receive and hold the same on deposit for the use and to the order of such stockholder; and when said appraisement shall have
58 been so paid or deposited, as aforesaid, said stockholder shall cease to have any further interest therein, and shall on demand made surrender said stock and all certificates thereof to said corporation; and the fees of said appraisers and of said clerk shall be taxed by said judge and paid by said corporation.

SEC. 6. Said consolidated corporation shall be subject to the charter of the corporation into which such merger is made, as such charter may be modified by such agreement of merger and by the provisions of this act; provided, however, that when a special duty, liability or burden is imposed, or any special privilege, franchise or immunity conferred on the corporation so merged, as aforesaid, by its charter, such duty, liability or burden, shall, until otherwise ordered, attach to, and be discharged by, and such franchise, immunity or privilege be enjoyed by such consolidated corporation, so far as the same were applicable to the road and franchise of said merged corporation.

SEC. 7. Said consolidated corporation shall ticket passengers, check baggage, way-bill freight, transfer cars, and give equal facilities for the convenient transfer of passengers, baggage and freight to and from all connecting railroads, and shall make no unequal discrimination for or against either of said railroads in its joint passenger and freight rates, or in the division of said rates.

SEC. 8. Said consolidated corporation shall at all times be subject to the power, control, and legislation of the General Assembly of the State.

SEC. 9. This act shall take effect upon its passage.

Approved July 26th, 1871."

"(*Mass. Acts and Resolves*, 1872, *Chap.* 171.)

An act to authorize the Hartford and New Haven Railroad Company to consolidate with the New York and New Haven Railroad Company.

Be it enacted, etc.:

59 SECTION 1. The Hartford and New Haven Railroad Company may sell, transfer, merge, and consolidate its corporate rights, powers and estate to, into and with the New York and New

Haven Railroad Company, upon such consideration, terms, stipulations, and conditions as may be agreed upon between said corporations and as are authorized by the provisions of this act.

SEC. 2. The directors of said corporation may enter into proper agreements for the sale, transfer, purchase and merger hereby authorized, prescribing the terms and conditions thereof, the mode of effecting such transfer, merger and consolidation, and the number of directors thereof, one or more of whom shall be citizens of this Commonwealth, the amount of the capital stock of such consolidated corporation, which shall not exceed the present capital of said companies, the manner of converting the capital stock of said original corporations into the capital stock of said consolidated corporation, and such other matters and things as may be necessary or proper to effect the purposes and merger aforesaid; provided, however, that such agreement of the directors hereinbefore authorized shall be submitted to the stockholders of each of said corporations separately, at meetings specially called for that purpose, and, if approved by a vote of at least two-thirds of the stock represented at each of said meetings, said agreement so to be made by said directors shall become the agreement of said corporations respectively, and a certified copy thereof, together with a certificate of the adoption thereof by the stockholders of said respective corporations, under the hand of the secretary of each of said corporations, shall be filed in the office of the secretary of this Commonwealth.

SEC. 3. Upon the filing of such certificate said companies shall become and be merged and consolidated into one corporation, under the name of the New York, New Haven and Hartford Railroad Company, and shall become and be a body politic and corporate, and shall possess, hold and enjoy all the rights powers, franchises and privileges theretofore vested in either of said corporations, and all property, real and personal, of said companies, shall be deemed to be vested in said consolidated corporation.

SEC. 4. All rights of creditors and all liens upon the property of either of said corporations shall continue unimpaired, and all debts, contracts and liabilities of either of said corporations shall continue unimpaired, and shall attach to and become binding upon such consolidated company, and may be enforced in the same manner and to the same extent as if incurred by said latter corporation, and in the courts of Massachusetts in all cases in which the claimants shall so elect.

SEC. 5. Said consolidated corporation shall be subject to the charter of the corporation into which such merger is made: Provided, however, that when a special duty or liability is imposed, or any special franchise, privilege or immunity is conferred on the corporation so merged by its charter, such duty or liability shall attach to and be discharged by, and such franchise, immunity or privilege be enjoyed by such consolidated corporation, so far as the same is applicable to the road and franchise of said merged corporation.

SEC. 6. Said consolidated corporation shall ticket passengers, check baggage, way-bill freight, transfer cars and give full and equal

facilities for the convenient transfer of passengers, baggage and freight, to and from all connecting railroads, and shall make no unequal discrimination for or against either of such railroads, or any railroad that may at any time meet or connect with the said consolidated railroad.

SEC. 7. Said consolidated corporation shall at all times be subject to the legislature of this State as to that portion of its road in this State, as heretofore; and shall be subject to the general laws of this State as to its whole road so far as such laws may be applicable thereto.

SEC. 8. The provisions of the eleventh section of the charter of the New York and New Haven Railroad Company shall remain in force and apply to that portion of the road of the consolidated company which is now the New York and New Haven railroad, and, for the purpose contemplated in that section, the portion of
61 the consolidated road which is now the Hartford and New Haven railroad, shall forever be considered a connecting road.

SEC. 9. This act and any act regarding the said consolidated corporation shall be subject to alteration, modification or repeal by the legislature.

SEC. 10. This act shall take effect upon its passage.

Approved April 5, 1872."

"(*Private Laws of Conn., Vol. I, p.* 1002.)

Resolve incorporating the Hartford and New Haven Railroad Company; passed May, 1833.

SECTION 1. Resolved by this assembly, That James Brewster, John Babcock, John S. Mitchell, Joel Root, Alexander Harrison, Obadiah Pease, Richard Hubbard, Elisha A. Cowles, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of "The Hartford and New Haven Railroad Company," and by that name to sue and be sued, plead and be impleaded, in any court in this State, to make and have a common seal, and the same to break, alter or renew at pleasure; and the company is hereby vested with all powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth; and said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble rail road or way from some suitable point in the town of Hartford by the most direct and feasible route to the city of New Haven; and to the navigable waters of New Haven harbor, at some point between the canal basin and the west end of Tomlinson's bridge, so called; and to transport, take and carry property and persons upon said rail road or way, by the power and force of steam, of animals, or of any mechanical or other power, or any combination of them which said company may choose to apply; and for the purpose of

constructing said rail road or way, the said company is hereby
62 authorized to lay out their road, not exceeding six rods wide, through the whole length, and for the purpose of cutting and embankments; and for obtaining stone and gravel may take as much more land as may be necessary for the proper construction and security of said road.

Provided, that all damages that may be occasioned to any person or corporation, by the taking of such land or materials for the purpose aforesaid, shall be paid for by said company in manner hereinafter provided. And further provided, that no part of said rail road or way shall be located or constructed within the limits of the city of Hartford, except with the consent of the mayor, aldermen, common council and freemen of said city, and upon such terms and conditions as said mayor, aldermen, common council and freemen and said railroad corporation shall mutually agree.

SEC. 2. That the capital stock of said company shall be five hundred thousand dollars, with the privilege of increasing the same to one million of dollars, and to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner as the by-laws of said company shall direct.

SEC. 3. That the persons named in the first section hereof, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such time and place as they or a majority of them may appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have power to make the shares so subscribed the capital stock of the company; provided, they shall not exceed ten thousand shares, and in case the subscriptions shall exceed ten thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

63 SEC. 4. That the immediate government and direction of the affairs of the company shall be vested in a board of seven directors, who shall be chosen by the stockholders of said company, in the manner hereinafter provided, and shall hold their offices until others are duly elected and qualified to take their places as directors; and the said directors, a majority of whom shall be a quorum for the transaction of business, shall elect one of their number to be president of the board, who shall also be president of said company; they shall also choose a clerk and treasurer, and the treasurer so chosen by them shall give bonds, with security to such company, in such sum as the said directors may require for the faithful discharge of his trust.

SEC. 5. That the persons named in the first section hereof are hereby authorized, after the books of subscription to the capital stock of said company are closed, to call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint for the choice of directors of said com-

pany; and in all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholders in person, or by lawful proxy; and the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place and upon such notice as the said company in their by-laws may prescribe.

SEC. 6. That in case it shall so happen that an election of directors should not be made on any day appointed by the by-laws of said company, such company shall not, for that cause, be deemed to be dissolved, but such election may be held on any day which shall be appointed by the directors of said company.

SEC. 7. That the directors shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate and effects of said company; the transfer of shares; the duties and conduct of their officers and servants; touching the election and meetings of the directors, and all
64 matters whatsoever which may appertain to the concerns of said company; said company is also hereby empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted; and may, by their agents, surveyors, engineers and servants enter upon such route or places to be designated by the directors, and approved by three commissioners to be appointed by the General Assembly for that purpose, who shall have no interest in said railroad, after notice to the persons whose lands or estate may have been taken, and after hearing all objections which may by such persons be made to the location made by the directors, as the line, course, road, or way whereon to construct said rail road or way; and it shall be lawful for said company to enter upon and use all such lands and real estate as may be necessary for them in the manner and for the purposes set forth in the first section hereof; and said company shall be holden to pay all damages that may arise to any person or persons; and if the person or persons to whom damage may so arise, and said company cannot agree as to the amount of such damages, it shall be the duty of said company to apply to the superior court of the county in which the real estate damage may be situated, and thereupon said superior court shall appoint three disinterested and judicious freeholders to assess the amount of such damage; and said freeholders, after being sworn, shall give notice to the parties of the time and place of their meeting on the business of their appointment, at which time and place they shall proceed to hear the parties, and to inquire into the extent of the damages, and shall assess just damages to the person or persons whose real estate may be taken or injured, taking into consideration any benefit or advantage which may result to such person or persons from said railroad; which assessment shall be in writing under the hands of said freeholders, and the same shall be returned to the clerk of said superior court, who shall record it; and when so returned and recorded such assessment shall have the effect of

65 a judgment; and execution may issue at the end of sixty days from the time when such assessment shall be so returned in favor of the persons respectively to whom damage may be assessed for the amounts to them assessed; provided, that said railroad shall not be worked upon or opened across the land of any person until the damages assessed to such persons shall have been paid or secured to be paid to his satisfaction; and that the said damages shall be paid within sixty days after the same shall have been finally determined.

SEC. 8. That when the lands or other property or estate of any *femme covert*, infant or person *non compos mentis* shall be necessary for the construction of said railroad, the husband of such *femme covert*, and the guardian of such infant, or *non compos mentis*, may release all damages for any lands or estate taken and appropriated as aforesaid, as they might do if the same were holden in their own right respectively.

SEC. 9. That said company is hereby authorized to construct, erect, build, make and use a single, double or treble rail road or way of suitable width and dimensions, to be determined by the directors of said company, on the line or course by them designated, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same; and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interests.

SEC. 10. That whenever it shall be necessary for the construction of their single, double or treble rail road or way to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said company to construct said railroad across or upon the same, but the said company shall restore said stream or water-course, or road or highway thus intersected, to its former state, or in a sufficient manner not to impair its usefulness; and said railroad corporation shall constantly maintain in good repair all bridges, with their abutments and embankments, which they may construct for the purpose of constructing their railroad
66 over any highway or private way, or for constructing such highway or private way over said railroad.

SEC. 11. That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate and receive the tolls and charges by them to be received for transportation of persons or property on their single, double or treble railroad aforesaid, hereby authorized to be constructed, erected, built and used or upon any part thereof; provided, that the rates of said tolls and charges shall be fixed annually by said company, in the month of March, and shall immediately thereafter be published in at least one newspaper printed in each of the cities of Hartford and New Haven; and the rates aforesaid shall not be raised at any other time during the year.

SEC. 12. That if any person shall willfully do, or cause to be done, any act or acts whatever whereby any building, construction or work of said company, or any engine, machine, or structure, or any

matter or things appertaining to the same shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemenor, and shall forfeit and pay to said corporation double the amount of damages sustained by means of such offense or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

SEC. 13. That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company at such times, and in such proportions, and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment, pursuant to the requisition of the board of directors, the stock of such stockholder, or so much thereof as shall be necessary, may be sold by the directors of said corporation at public auction after the lapse of six months from the time when the payment became due; and all surplus money, the avails of such sale, after deducting the payments due and
67 interest thereon, and the necessary expenses of the sale, shall be paid over to such negligent stockholder.

SEC. 14. That the capital stock of said corporation shall be and remain free from taxation until the profit collected by said railroad corporation shall be sufficient to afford a dividend of five per cent. per annum on the capital stock.

SEC. 15. If said company shall not expend the sum of one hundred thousand dollars upon said road or way within four years, or if they shall not construct and complete and put in operation a single, double or treble rail road or way as hereinbefore authorized within six years after the passage of this act, then the rights, privileges and powers of said corporation shall be null and void, and the legislature shall have the power at all times to authorize the construction of other railroads to be connected with or to cross the route of this railroad.

SEC. 16. That said corporation shall report annually to the legislature of this State the amount of their expenditures on said railroad and the income and profits accruing thereon, which report shall be made by the president and secretary of said corporation under oath."

"(*Private Laws of Conn., Vol. I, p.* 1006.)

Resolve incorporating the Hartford and Springfield Railroad Company; passed May, 1835.

SECTION 1. Resolved by this assembly: That the persons named in the first section of the act incorporating the Hartford and New Haven Railroad Company, together with such other persons as they may associate with them for that purpose, be and they are hereby constituted a body politic and corporate by the name of 'The Hartford and Springfield Railroad Company,' and by that name sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break,

alter or renew at pleasure, and said company are hereby
68 vested with all powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act. And said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble rail road or way from some suitable point in the city of Hartford by the most direct and feasible route to the northern line of the State of Connecticut; thence to Springfield, in the State of Massachusetts, provided the company shall obtain leave from the legislature of Massachusetts so to extend the same; and to transport, take and carry property and persons upon said rail road or way by the power and force of steam or animals or any mechanical or other power or any combination of them which said company may choose to apply. And for the purpose of constructing said rail road or way the said company are hereby authorized to lay out their road, not exceeding six rods wide, through the whole length, and for the purpose of cuttings and embankments and for obtaining stone and gravel may take as much more land as may be necessary for the proper construction and security of said road; provided that all damages that may be occasioned to any person or corporation by the taking of such lands or materials, for the purpose aforesaid, shall be paid for by said company in manner hereinafter provided.

SEC. 2. That the capital stock of said company shall be five hundred thousand dollars, with the privilege of increasing the same to one million of dollars, and to be divided into shares of one hundred dollars each, which shares shall be deemed personal property and be transferred in such manner as the by-laws of said corporation shall direct.

SEC. 3. That James Brewster, John Babcock, John S. Mitchell, Joel Root, and such other persons as they shall associate with them for that purpose, not exceeding ten in the whole, said Brewster, Babcock, Mitchell and Root, or a majority of them, shall open books to receive subscriptions to the capital stock of said company at such times and places as they, or a majority of them, may
69 appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for that purpose. And if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed the capital stock of the company; provided, they shall not exceed ten thousand shares; and in case the subscription shall exceed ten thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

SEC. 4. That the immediate government and direction of the affairs or the company shall be vested in a board of seven directors, who shall be chosen by the stockholders of said company, in the manner hereinafter provided, and shall hold their offices until others are duly elected and qualified to take their places as directors. And the said directors, a majority of whom shall be a quorum for the

transaction of business, shall elect one of their number to be president of the board, who shall also be president of said company. They shall also choose a clerk, who shall be sworn to a faithful discharge of his duty, and a treasurer, who shall give bonds with surety to said company in such sum as the said directors may require, for the faithful discharge of his trust.

SEC. 5. That the persons authorized by the third section of this act to open the books for subscriptions to the capital stock are hereby authorized, after the books of subscription to the capital stock of said company are closed, to call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy. And the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place and upon such notice as the said company, in their by-laws, may prescribe.

70 SEC. 6. That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, such company shall not for that cause be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company.

SEC. 7. That the directors shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper, touching the disposition and management of the stock, property, estate and effects of said company, not contrary to this charter, or the laws of this State, or of the United States; the transfer of shares, the duties and conduct of their officers and servants, touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects for which this incorporation is granted, and may, by their agents, surveyors, engineers and servants, enter upon such route or plans, to be designated by the directors and approved by three commissioners, to be appointed by the General Assembly for that purpose, who shall have no interest in said railroad, after notice to the persons whose lands may have been taken, and after hearing all objections which may by such persons be made to the location made by the said directors, as to the time, course, road or way whereon to construct said rail road or way. And it shall be lawful for said company to enter upon and use all such lands and real estate as may be necessary for them, in the manner and for the purposes set forth in the first section hereof; and said company shall be holden to pay all damages that may arise to any person or persons; and if the person or persons to whom damage may so arise, and said company cannot agree as to the amount of such damages, it shall be the duty of said company to apply to the superior court of the county in which the real estate damaged may be sit-

71 uated, and to cause notice to be given to the adverse party,

of such application, and thereupon said superior court shall appoint three disinterested and judicious freeholders, to assess the amount of such damages, and said freeholders, after being sworn, shall give notice to the parties, of the time and place of their meeting, on the business of their appointment, at which time and place they shall proceed to hear the parties, and to inquire into the extent of the damages, and shall assess just damages to the person or persons whose real estate may be taken or injured, which assessment shall be in writing, under the hands of said freeholders, and the same shall be returned to the clerk of said superior court, who shall record it, and when so returned and recorded, such assessment shall have the effect of a judgment, and execution may issue at the end of sixty days from the time when such assessment shall be so returned, in favor of the persons respectively, to whom damages may be assessed, for the amount so to them assessed; provided, that said railroad shall not be opened across the lands of any person until the damages assessed to such persons shall have been paid or secured to be paid to his satisfaction, and that the said damages shall be so paid within sixty days after the same shall have been finally determined.

SEC. 8. That when the lands or other property or estate of any *femme covert*, infant or person *non compos mentis* shall be necessary for the construction of said railroad, the husband of such *femme covert* and the guardian of such infant or person *non compos mentis* may release all such damages for any lands or estate taken and appropriated as aforesaid, as they might do if the same were holden in their own right respectively.

SEC. 9. That said company is hereby authorized to construct, erect, build, make and use a single, double or treble rail road or way, of suitable width and dimensions, to be determined by the directors of said company on the line or course by them designated,
and shall have power to regulate the time and manner in
72 which goods and passengers shall be transported, taken and
carried on the same, and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns as they may deem suitable for their interests.

SEC. 10. That whenever it shall be necessary for the construction of their single, double or treble rail road or way to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said company to construct such railroad across or upon the same, but the said company shall restore the said stream, or water-course or road, or highway thus intersected, to its former state, or in sufficient manner not to impair its usefulness; and in all cases when any road or public highway is so located that said railroad cannot be judiciously laid out and constructed across or upon the same without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner that said railroad may be made on the best site of ground for that purpose; provided, said corporation shall put such road in as good repair as at the time of changing or altering the same.

SEC. 11. That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property on their single, double or treble rail road or way aforesaid, hereby authorized to be constructed, erected, built or used or upon any part thereof.

SEC. 12. That if any person shall willfully do, or cause to be done, any act or acts whatever whereby any building, construction or works of said company, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be deemed to be guilty of a misdemeanor and shall forfeit and pay to said corporation double the amount of damages sustained by means of such offense or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

73 SEC. 13. That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company at such times and in such proportions and upon such conditions as they may deem fit, and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors the stock of such stockholder or so much thereof as shall be necessary may be sold by the directors of said corporation at public auction after the lapse of six months from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payments due and interest thereon and the necessary expenses of the sale, shall be paid over to such negligent stockholder.

SEC. 14. That the legislature may authorize any company to enter with another railroad at any point of said Hartford and Springfield railroad, paying for the right of using the same or any part thereof such a rate of toll as the directors of the said Hartford and Springfield Railroad Company may from time to time prescribe, and complying with such rules and regulations as may be established by said Hartford and Springfield Railroad Company.

SEC. 15. That said corporation shall not be allowed to construct said railroad or any part thereof within the limits of the city of Hartford, except under the direction of the court of common council of said city, nor shall steam power be used on any part of said railroad within said city without the permission of said court of common council.

SEC. 16. That should it become necessary to erect a bridge across Connecticut river, said company are hereby authorized and empowered to erect said bridge for the sole and exclusive accommodation of the travel on the said railroad, and it shall not be lawful for said company to permit the passing of the said bridge by carriages of any description other than those which are adapted to the traveling on the said railroad, nor by horses not attached to such railroad carriages, nor by persons on foot, nor for any other travel whatever, except for such persons, carriages or horses as may be em-

74 ployed in the immediate service of the said company, and a

suitable draw shall be erected in said bridge by said company, and placed over the channel of said river at the west end of said bridge, not less than thirty feet wide, and all vessels shall be permitted at all times to pass said draw without payment of toll, and suitable persons shall be provided by said company to open and shut said draw, on due notice of the approach of said vessels.

SEC. 17. That if said company shall not expend the sum of seventy thousand dollars upon said rail road or way, within four years, or if they shall not contract and complete and put in operation a single, double or treble rail road or way, as hereinbefore authorized, within six years after the passage of this act, then the rights, privileges and powers of said corporation shall be null and void.

SEC. 18. That the capital stock of said company shall be assessed at its just value in money, and taxed at the same rate as personal estate.

SEC. 19. It is hereby provided that nothing herein contained shall be construed to prejudice or impair any of the rights now vested in the Enfield Bridge Company.

SEC. 20. Resolved further, That this act may be altered, or amended, at the pleasure of the General Assembly."

"(*Mass. Special Laws, Vol.* 8, *p.* 116, 1839, *Chap.* 101.)

An act to incorporate the Hartford and Springfield Railroad Corporation.

Be it enacted, &c.:

SECTION 1. That Charles Stearns, George Dwight, Stephen O. Russell and George Bliss, their associates and successors, are hereby made a corporation by the name of the Hartford and Springfield Railroad Corporation, with all the powers and privileges, and subject to all the duties, liabilities and provisions
75 contained in that part of the thirty-ninth chapter of the Revised Statutes which relates to railroad corporations, in the statute of one thousand eight hundred and thirty-seven, chapter two hundred and twenty-six, in the statute of one thousand eight hundred and thirty-eight, chapter ninety-nine, and in the forty-fourth chapter of said Revised Statutes; and said corporation is hereby authorized and empowered to locate, construct, and finally complete a railroad from a point in Springfield, to the north line of the State of Connecticut, commencing either at or near Chicopee river, or at or near the village of Springfield, and passing southerly as near the Connecticut river as is convenient, and in the valley of the river, either upon the east side thereof, through a part of the town of Springfield, and near the mouth of the Pecowsic brook, and thence through the meadows in the town of Longmeadow, in the general direction towards Thompsonville to the line of the State of Connecticut; or upon the westerly side of Connecticut river, and as near the same as is conveniently practicable, through a part of the town of West Springfield, to the line of the State of Connecticut, with a view to unite the said railroad with a railroad authorized by

the legislature of Connecticut, from Hartford to the line of the State of Massachusetts.

SEC. 2. The capital stock of said corporation shall not exceed the sum of three hundred thousand dollars, and shall be divided into shares of one hundred dollars each; and the said corporation may purchase and hold such real estate, materials, engines, cars, and other things, as may be necessary for depots, for the use of said road, and for the transportation of persons, goods, and merchandise.

SEC. 3. The said corporation may unite the track of their road with the Western railroad, at such safe and convenient place, near the Connecticut river, as shall not interfere with the depot building of the Western Railroad Corporation, they paying all expenses incident thereto. And the said Hartford and Springfield Railroad Corporation may cross the track of the Western railroad, in such
76 safe and convenient place near said river, as will not interfere with said buildings, or obstruct the convenient use of the track of said Western railroad.

SEC. 4. The legislature may authorize any company to enter with another railroad at any point of said Hartford and Springfield railroad within this State, and use the same, or any part thereof, paying therefor such a rate of toll or compensation as the legislature may from time to time prescribe, or that may be fixed under the provisions of any general law of this Commonwealth, complying with such rules and regulations as may be established by said Hartford and Springfield Railroad Corporation; provided, however, that no other corporation shall enter upon said Hartford and Springfield railroad, with any motive power, unless the said Hartford and Springfield Railroad Corporation, shall refuse to draw over their road or any part thereof, the cars of any other railroad corporation which may be authorized to enter with their railroad upon the road of said Hartford and Springfield Corporation.

SEC. 5. The legislature may, after the expiration of five years from the time when the said railroad shall be opened for use, from time to time, alter or reduce the rate of tolls or other profits upon said road; but the said tolls shall not, without the consent of said corporation, be so reduced as to produce, with said profits, less than ten per cent. per annum.

SEC. 6. If the said corporation shall not have been organized and the location of the route of said road filed with the county commissioners of the county of Hampden, within two years from the passage of this act, or if the said corporation shall fail to complete said road within three years from the passage of this act, the same shall be void.

SEC. 7. The persons who shall become stockholders in the Hartford and Springfield Railroad Company incorporated by the legislature of the State of Connecticut, in the year one thousand eight hundred and thirty-three, shall be stockholders of this corporation, together with such persons as shall become stockholders of
77 this corporation; and when the stockholders shall by vote have assented thereto, the said corporations shall become united into one corporation, by the name of the Hartford and

Springfield Railroad Corporation, with a capital not exceeding the amount of the joint capital of both corporations; and all the tolls, franchises, rights, powers, privileges, and property granted, or to be granted, acquired, or to be acquired, under the authority of the State of Connecticut or of this State, shall be held and enjoyed by all the said stockholders, in proportion to their number of shares in either or both of said corporations.

SEC. 8. After the said union shall be perfected, the said stockholders shall hold their meetings, make their by-laws, appoint their officers, and transact all their business, as one corporation; provided, that one or more of the officers of said corporation shall be resident in this Commonwealth, and one or more of them in the State of Connecticut, on whom process against said corporation may be legally served in either State; and said corporation shall be held to answer within the jurisdiction where such service shall be made, and the process is returnable.

SEC. 9. The share or shares of any stockholder in said corporation shall be liable to attachment, and to be taken on execution, in the State where such stockholder shall reside at the time of the service of such process; provided, the laws of such State authorize the attachment and taking on execution of such property; and an attested copy of such writ or execution, and of the return of the officer thereon, shall, at the time of such service, be left with the clerk or a director of said corporation, or at his usual place of abode, by the officer making the service.

SEC. 10. The said corporation shall so make out and keep an account of the expenditures on said road, from its commencement to its completion, as clearly to exhibit what portion thereof belongs to that part of said road situated in Massachusetts, and what portion to that part in Connecticut. And two commissioners shall be appointed, one by the governor of each State, to hold their
78 offices for the term of four years, and to be reasonably compensated for their services by said corporation, who shall ascertain what proportion of expenditures on said road, and of the other expenses attending its construction, maintenance, and use; also what proportion of the receipts and profits of said railroad shall properly appertain and belong to the portions of said road in each State respectively. And the annual report required to be made by the directors to the legislature of this Commonwealth shall be approved by the said commissioners.

SEC. 11. The said corporation, so far as their road is situated in Massachusetts, shall be subject to the general laws of this State to the same extent as if their road were wholly therein.

SEC. 12. The seventh, eighth, ninth and tenth sections of this act shall not take effect until the legislature of the State of Connecticut shall have enacted provisions similar to those contained in said sections; nor until the provisions so enacted in each State shall have been accepted by the stockholders of each of said corporation- at meetings duly called for the purpose; nor until the same shall have been accepted by the stockholders of said united corporation at a meeting called for the purpose; at which meeting they may ratify

and confirm all or any of their former doings, and adopt them as the acts and doings of said united corporation.

Approved, April 5, 1839."

"(*Private Laws of Conn., Vol. IV, p.* 1020.)

Incorporating the New York and New Haven Railroad Company; passed 1844.

Resolved by this assembly:

SECTION 1. That Joseph E. Sheffield, Samuel J. Hitchcock, William A. Reynolds, Nathan Smith, Nathaniel R. Clark, P. P. F. Degrand, S. S. Littlehall, Elihu Townsend, Anson G. Phelps, with such other persons as shall associate with them for that purpose, are constituted a body, politic and corporate, by the name of the New York and New Haven Railroad Company; and by that name to
79 sue and to be sued, plead and be impleaded in any court in this State, to make and to have a common seal, and the same to break, alter, or renew at pleasure. And the company is hereby vested with all powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth. And said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble rail road or way from some suitable point in the city of New Haven to the city of Bridgeport, and thence westerly to the west line of this State towards the city of New York, in such route as shall be deemed most expedient, and to transport, take and carry property and persons upon said rail road or way by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them which said company may choose to apply. And for the purpose of constructing said rail road or way, the said company is hereby authorized to lay out their road not exceeding six rods wide through the whole length; and for the purposes of cutting and embankments, and for the purpose of necessary turnouts and for obtaining stone and gravel, may take as much more land as may be necessary for the proper construction and security of said road; with permission also to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation; provided, that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid for the purpose aforesaid shall be paid for by said company in manner hereinafter provided.

SEC. 2. That the capital stock of said company shall be two millions of dollars, with the privilege of increasing the same to three millions of dollars, and to be divided into shares of one hundred dollars each; which shares shall be deemed personal property, and be transferred in such manner and at such places as the by-laws of said company shall direct.

SEC. 3. That the persons named in the first section hereof,
80 or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such times and

places as they, or a majority of them, may appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than twenty thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed the capital stock of the company; provided, they shall not exceed thirty thousand shares, and in case the subscription shall exceed thirty thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

SEC. 4. That the immediate government and direction of the affairs of the company shall be vested in a board of nine directors, who shall be chosen by the stockholders of said company in the manner hereinafter provided, and shall hold their offices until others are duly elected and qualified to take their places as directors; and the said directors (four of whom, the president being one, shall be a quorum for the transaction of business) shall elect one of their number to be president of the board, who shall also be president of said company; they shall also choose a clerk, who shall be sworn to a faithful discharge of his duty, and a treasurer, who shall give bonds with a surety to said company in such sum as the said directors may require, for the faithful discharge of his trust.

SEC. 5. That the persons authorized by the third section of this act to open the books for subscriptions to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, to call the first meeting of the stockholders of said company in such way and at such time and place as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy; and the an-
81 nual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place, and upon such notice, as the said company in their by-laws may prescribe.

SEC. 6. That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancy which may occur by death, resignation or otherwise.

SEC. 7. That the directors shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate and effects of said company, not contrary to this charter or the laws of this State or of the United States, the transfer of shares, the duties and conduct of their officers and their servants, touching the election of and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company is also empowered to purchase, receive

and hold such real estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers and servants enter upon such route or places (to be designated by the directors and approved by three commissioners to be appointed by the General Assembly for that purpose, who shall have no interest in said railroad), after such notice given as the commissioners shall deem reasonable, to the persons whose lands may have been taken, and after hearing all objections which may by such persons be made to the location made by the said directors, as to the location, line, course, road or way whereon to construct said rail road or way. And it shall be lawful for said company to enter upon and use all such lands and real estate as may be necessary for them in the manner and for the purposes set forth in the first section hereof; and said com-
82 pany shall be holden to pay all damages that may arise to any person or persons, and if the person or persons to whom damage may so arise and said company cannot agree as to the amount of such damages, it shall be the duty of said company to apply to the superior court of the county in which the real estate damaged may be situated and to cause notice to be given to the adverse party of such application, and thereupon said superior court shall appoint three disinterested and judicious freeholders to assess the amount of such damages; and said freeholders, after being sworn, shall give notice to the parties of the time and place of their meeting on the business of their appointment, at which time and place they shall proceed to hear the parties, and to inquire into the extent of the damages, and shall assess just damages to the person or persons whose real estate may be taken or injured, which assessment shall be in writing, under the hands of said freeholders, and the same shall be returned to the clerk of said superior court, who shall record it, and when so returned and recorded, such assessment shall have the effect of a judgment, and execution may issue at the end of sixty days from the time when such assessment shall be so returned, in favor of the persons respectively to whom damages may be assessed, for the amount so to them assessed. Provided that said railroad shall not be opened across the lands of any person until the damages assessed to such persons shall have been paid or secured to be paid to his satisfaction, and that the said damages shall be so paid or deposited with the treasurer of the county within sixty days after the same shall have been finally determined; provided, that it shall not be necessary in order to the location of said road by the directors and the approval thereof by the commissioners, that the width thereof shall be definitely established by said directors or commissioners previous to said location; but before the damages shall be assessed to any landholder by said appraisers, the width of said railroad shall be definitely fixed and established by said directors over and across the land so taken upon one or
83 both sides of the line of the road so located. And said company may at any time before the completion of said road alter and change any part of the location thereof, or discontinue such part thereof, as in their opinion convenience or necessity may

require to be changed or discontinued, subject to the approval of the commissioners on said road, and the other requirements of said charter.

Provided further, that in case the persons required by this section to be notified shall have no place of residence in this State known to the occupant of the land over which said road passes, or to any of the directors or commissioners of said company, then a notice published for six weeks successively in two newspapers printed in New Haven, stating what proceedings are intended by said company to be instituted, shall be sufficient notice to such non-resident landholder; and when the place of residence of any such landholder is known to the occupant of the land, or any director or commissioner aforesaid, and is out of this State, then a duplicate original notice, or a true and attested copy of the original notice, deposited in a post-office, post paid, directed to such person eight weeks before the hearing is to be had shall be sufficient notice according to said charter; or any judge may give an order of notice as in case of a bill in equity, in any of the cases aforesaid.

SEC. 8. That when the lands or other property or estate of any *femme covert*, infant, or person *non compos mentis*, shall be necessary for the construction of said railroad, said lands may be taken, notice being given to the husband of such *femme covert*, and the guardian of such infant, or person *non compos mentis*, and they may respectively release all such damages for any lands or estate taken and appropriated as aforesaid, as they might do if the same were holden in their own right respectively.

SEC. 9. That said company is hereby authorized to construct, erect, build, make and use a single, double or treble rail way or road of suitable width and dimensions, to be determined by the directors of said company, on the line or course by them designated, and shall have power to regulate the time and manner in which
84 goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns as they may deem suitable for their interests. Provided, that the commissioners on said railroad, within three days after approving the route thereof within said cities of New Haven and Bridgeport, respectively, shall lodge with the clerk of said cities, respectively, a written description of the route so approved by them, within the limits of said respective cities, which shall be and remain the route of said railroad, unless within thirty days after said description is so lodged with such clerk, either of said cities, at a city meeting legally warned for that purpose, shall appeal from the doings of said commissioners to a judge of the superior court, who, upon hearing of said city and railroad company, shall have power to set aside the aforesaid doings of the said commissioners, in case said city is aggrieved thereby. And in case such judge, upon such hearing, shall not set aside said doings of said commissioners, the route so approved by them shall be and remain the route of said railroad; and in case said judge shall set aside said doings of said commissioners, the route of said railroad within said city shall be

designated and approved anew, in the manner prescribed in said charter, with the same right of appeal. Provided further, that after said route of said railroad shall have been finally established as aforesaid, said corporation shall construct that part of said road within the limits of the cities of New Haven and Bridgeport, under the direction of the court of common council of said cites respectively.

SEC. 10. That whenever it shall be necessary for the construction of their single, double or treble rail road or way to intersect or cross any stream of water, or water-course, or any road or highway, it shall be lawful for said company to construct said railroad across or upon the same; but said company shall restore the said stream or water-course, or road or highway thus intersected, to its former state, or in sufficient manner not to impair its usefulness.

85 And in all cases when any road or public highway is so located that said railroad cannot be judiciously laid out and constructed across or upon the same, without interfering therewith, in such case or cases, said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner that said railroad may be made on the best site of ground for that purpose; provided, said corporation shall put such road in as good repair as at the time of changing or altering the same. And said corporation may apply to any judge of the superior court who may by law judge between the parties, who, after notice given, may appoint three disinterested persons to determine whether said corporation have complied with the provisions aforesaid; and if approved by them, their decision shall be final.

SEC. 11. That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate and receive the tolls and charges by them to be received for transportation for persons or property on their single, double or treble rail road or way, aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof. Provided, that a uniform rate per mile shall be charged for the transportation of such passengers or freight as shall be received from or delivered to the several railroads in this State with which said railroad may be connected. And provided also, that it shall be the duty of said company to run their trains each way for passengers at such times and in such manner as to afford reasonable facilities for receiving passengers from and delivering them to each of the other railroads in this State with which said road may be connected.

SEC. 12. That if any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or works of said company, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor,

86 and shall forfeit and pay to said corporation double the amount of damages sustained by means of such offense or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

SEC. 13. That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment, pursuant to the requisition of the board of directors, the stock of such stockholder, or so much thereof as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of thirty days from the time when the payment became due; and the surplus money, the avails of such sale, after deducting the payments due, and interest thereon and the necessary expenses of the sale, shall be paid over to such negligent stockholder.

SEC. 14. That the legislature may authorize any company to enter with another railroad at any point of said New York and New Haven railroad, paying for the right of using the same, or any part thereof, such a rate of toll as the directors of the said New York and New Haven Railroad Company may from time to time prescribe, and complying with such rules and regulations as may be established by said New York and New Haven Railroad Company.

SEC. 15. That should it become necessary to cross the Housatonic river within six miles of Washington bridge, said company are hereby authorized and empowered to make said crossing or viaduct for the sole and exclusive accommodation of the travel on the said railroad; and it shall not be lawful for said company to permit the passing of the said crossing or viaduct by carriages of any description other than those which are adapted to the traveling on the railroad, nor by horses not attached to such railroad carriages, nor by persons on foot, nor for any other travel whatever, except for such persons, carriages or horses as may be employed in the immediate service of said company.

SEC. 16. That if said company shall not expend the sum of
87 one hundred thousand dollars upon said rail road or way, within two years from the arising of this assembly, or if they shall not construct and complete and put in operation a single, double, or treble rail road or way, as hereinbefore authorized, within four years after the passage of this act, then the rights, privileges and powers of said corporation shall be null and void. The sum of one hundred thousand dollars aforesaid to be expended in equal portions upon the road between New Haven and Bridgeport and upon the road between Bridgeport and the west line of this State.

SEC. 17. That the capital stock of said company shall be assessed at its just value in money and taxed at the same rate as personal estate.

SEC. 18. It is hereby provided, that nothing herein contained shall be construed to prejudice or impair any of the rights now vested in the Washington Bridge Company.

SEC. 19. Whenever said road shall cross any streams or creeks navigated by vessels, at or above the place of such crossing, the said company shall erect draws of such width or culverts of such height as will suitably and conveniently accommodate such navigation, the places where such draws or culverts shall be erected and the

width or height of said culverts or draws being first determined by the commissioners on said road; and all vessels shall be permitted at all times to pass said draws without payment of toll; and suitable persons shall be provided by said company to open and shut said draws on due notice of the approach of said vessels. Provided, nevertheless, that the draw in the bridge of the said road over the Housatonic river shall not be less than forty feet in width.

Resolved further: SEC. 20. That this act may be altered, amended or repealed at the pleasure of the General Assembly."

88 "(*Laws of N. Y.*, 1846, *Chap.* 195.)

An act to authorize the New York and New Haven Railroad Company to extend their railroad from the Connecticut line to the New York and Harlem railroad; passed May 11th, 1846, by a two-thirds vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Permission and authority are hereby given to the New York and New Haven Railroad Company, chartered by the legislature of the State of Connecticut at the May session thereof, in the year of our Lord one thousand eight hundred and forty-four, for the purpose of constructing a railroad from New Haven, in Connecticut, by the way of Bridgeport, in Connecticut, to the west line of the State of Connecticut towards the city of New York, to continue and extend their railroad from the dividing line of the States of New York and Connecticut by such routes as shall be established by said company, through the county of Westchester to the New York and Harlem Railroad Company's line of road in said county, and to unite or connect with said New York and Harlem railroad at or near Williams Bridge, in said county of Westchester; and to take, transport and convey persons and property upon the same by the power and force of steam or animals, or any mechanical power or combination of the same. The route to be so established, as aforesaid, shall be located in such manner as shall be approved by three commissioners who shall be appointed by the governor, and who shall have no interest in said company or in the location of said route; and, before approving of such route, the said commissioners shall afford a reasonable opportunity to all persons interested therein, to be heard in respect thereto; and such notice as the said commissioners shall direct shall be given to all persons whose lands shall be required for the said route.

89 SEC. 2. The said New York and New Haven Railroad Company is hereby authorized and empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects and intentions of this act; and may, by agents, surveyors and engineers, enter upon such route, place or places as may be designated by the board of directors of said company, for the purpose of making surveys, and determining the line, course, road or way, whereon to construct the said rail road or ways,

paying all damages to the owner or occupant thereof. And it shall be lawful for the said company to enter upon and take possession of all such necessary and convenient real estate, as shall be voluntarily granted, with or without purchase, or of which the possession of the company shall be confirmed by virtue of the proceedings hereinafter prescribed. In case any disagreement shall occur between said company and the owner or owners of any such necessary or convenient real estate as aforesaid in regard to the price to be paid by the said company for the same, the board of directors may present their petition to the chancellor of this State, or to the vice-chancellor of the circuit wherein such land may be situated, setting forth the necessity of such lands for making their road or ways as aforesaid, the attempt and failure to purchase the same, with the name and residence of the owner or owners; and the chancellor or vice-chancellor shall direct such notice to the owner or owners of such lands as he shall deem proper, with the time and place of hearing the parties, and, upon proof of due service of such notice, and upon hearing the parties or either of them, if the other, after due notice, shall not attend, the chancellor or vice-chancellor shall appoint three competent and disinterested freeholders of the county in which the lands are situated to be commissioners to appraise said lands. The said commissioners shall appraise said lands, and shall award to the owners thereof what they shall deem to be the full value of the same, and assess the damages such owners may sustain by the taking of their lands, by injury to buildings, fences or lands, and in
90 the construction of such road, without any deduction on account of any real or supposed benefit or advantage which such owners of said land may derive from the construction of such road; and shall be authorized to examine the land, to administer oaths and hear testimony, and shall make their appraisements in writing, without delay, under their hands, with a minute and accurate description of the lands appraised, with a map thereof, and shall report the same, with the testimony taken, to the court of chancery. The chancellor or vice-chancellor shall examine the report, and shall hear the parties if desired, and may increase or diminish the amount awarded if he shall be satisfied injustice has been done; upon proof to the chancellor or vice-chancellor within thirty days after his determination of payment to the owner, or in cases where the owner shall, on a tender thereof, refuse to accept the same, or where such owner is an infant or a married woman, or an idiot or insane person, or a non-resident, of the depositing to the credit of the owner, in such bank as the chancellor or vice-chancellor shall direct, of the amount of such appraisement, and the payment by the company of all expenses attending it, to be certified by the chancellor or such vice-chancellor; if not agreed upon by the parties, the said chancellor or vice-chancellor shall make a decree or order particularly describing the lands, and reciting the appraisement and the mode of making it, and all other facts necessary to a compliance with this section of this act; and when the said decree or order shall be recorded in the office of the clerk of the county in which the land is situated, whose duty it shall be to record the same, the possession

of said land shall be thereby confirmed to the said company, together with any legal and equitable right and title to the same, for the purpose hereinbefore named. In case any married woman, infant, idiot or insane person or non-resident who shall not appear after such notice, shall be interested in any such land, the chancellor shall appoint some competent and disinterested person to appear before the said commissioners and act for and in behalf of
91 such married woman, infant, idiot or insane person and non-resident. This section shall not be so construed as to deprive any individual through whose land said road may run of the right of crossing the same at suitable and convenient places for farming or other necessary purposes; nor to authorize the said corporation to take, except by agreement with the owner thereof, any timber, stone or other materials on any lands, except that on which the said rail road or way shall be constructed; the compensation of said appraiser shall be three dollars each, for every day they shall be actually employed.

SEC. 3. If within two years from the passage of this act said railroad shall not be commenced in said Westchester county, and twenty-five thousand dollars expended thereon, and if the same shall not be finished within three years and put in operation then this act shall be null and void.

SEC. 4. The said company is hereby authorized to construct a railroad, with one or more tracks of suitable width or dimensions, to be determined by the said company on the course designated by the directors as aforesaid: and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect station-houses and other necessary buildings for the accommodation of their concerns, and also to fix, regulate and receive the charges by them to be received for the transportation of persons or property on the said road, provided always that such charges for the transportation of any passenger and his ordinary baggage shall not exceed in the aggregate the sum of three cents per mile on that part of said road within this State.

SEC. 5. Whenever it shall be necessary for the construction of their said road to intersect or cross any stream of water or water-courses or any road or highway, it shall be lawful for the said company to construct their road across or upon the same; but the company shall restore the stream or water-course or road or highway thus intersected as near as may be to its former state so as
92 not unnecessarily to impair its usefulness, and in respect to any road or highway as may be satisfactory to the commissioners of highways of the town in which such road or highway may be intersected or crossed.

SEC. 6. The said company before running any cars upon the said railroad shall erect and thereafter maintain upon the sides thereof, except where the said railroad shall intersect some public highway, a fence of such height and strength as is by law required as a division fence between the owners of adjoining lands; and shall also make and keep in repair wherever the same may be necessary upon the

said railroad suitable guards to prevent cattle from running upon the same.

SEC. 7. The persons owning or occupying lands adjoining the said railroad are hereby authorized, at proper and convenient places, where they may have occasion to cross the said road, for farming and other necessary purposes, to erect suitable gates in the line of the said fence to facilitate such crossing, and to be kept in repair by the persons using the same.

SEC. 8. Said company shall be liable to be sued by summons in the same manner as corporations created by the laws of this State; and said summons, in case the same cannot be served on the officers of said company as now provided by law, may be served upon any agent of said company.

SEC. 9. The road authorized to be built by this act, shall be constructed with an iron rail weighing not less than fifty-six pounds to the yard.

SEC. 10. The legislature may at any time alter or repeal this act."

"(*Private Laws of Conn., Vol. IV, p.* 1025.)

Amending charter of New York and New Haven Railroad Company; passed 1846.

Whereas the legislature of the State of New York, in senate and assembly convened, heretofore, on the eleventh day of May, one thousand eight hundred and forty-six, passed an act entitled
93 'An act to authorize the New York and New Haven Railroad Company to extend their said road from the Connecticut line to the New York and Harlem railroad,' in substance and in the words following, to wit: 'An act to authorize the New York and New Haven Railroad Company to extend their railroad from the Connecticut line to the New York and Harlem railroad.' Passed, May 11, 1846, by a two-third- vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Permission and authority are hereby given to the New York and New Haven Railroad Company, chartered by the legislature of the State of Connecticut, at the May session thereof, in the year of our Lord one thousand eight hundred and forty four, for the purpose of constructing a railroad from New Haven, in Connecticut, by the way of Bridgeport, in Connecticut, to the west line of the State of Connecticut, towards the city of New York, to continue and extend their railroad from the dividing line of the States of New York and Connecticut, by such route as shall be established by said company through the county of Westchester to the New York and Harlem Railroad Company's line of road in said county, and to unite or connect with said New York and Harlem railroad at or near Williams Bridge, in said county of Westchester, and to take, transport and convey persons and property upon the same by the power and force of steam or animals, or any mechanical power or combination of the same. The route to be so established as afore-

said shall be located in such manner as shall be approved by three commissioners who shall be appointed by the governor, and who shall have no interest in said company or in the location of the said route; and, before approving of such route, the said commissioners shall afford a reasonable opportunity to all persons interested therein to be heard in respect thereto; and such notice as the
94 said commissioners shall direct shall be given to all persons whose lands shall be required for the said route.

SEC. 2. The said New York and New Haven Railroad Company is hereby authorized and empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects and intentions of this act; and may by agents, surveyors and engineers, enter upon such route, place or places as may be designated by the board of directors of said company for the purpose of making surveys and determining the line, course, road or way whereon to construct the said rail road or ways, paying all damages to the owner or occupant thereof. And it shall be lawful for the said company to enter upon and take possession of all such necessary and convenient real estate as shall be voluntarily granted, with or without purchase, or of which the possession of the company shall be confirmed by virtue of the proceedings hereinafter prescribed. In case any disagreement shall occur between said company and the owner or owners of any such necessary or convenient real estate as aforesaid, in regard to the price to be paid by the said company for the same, the board of directors may present their petition to the chancellor of this State or to the vice-chancellor of the circuit wherein such land may be situated, setting forth the necessity of such lands for making their road or ways as aforesaid, the attempt and failure to purchase the same, with the name and residence of the owner or owners; and the chancellor or vice-chancellor shall direct such notice to the owner or owners of such lands as he shall deem proper, with the time and place of hearing the parties, and upon proof of the due service of such notice, and upon hearing the parties, or either of them, if the other, after due notice, shall not attend, the chancellor or vice-chancellor shall appoint three competent and disinterested freeholders of the county in which the lands are situated, to be commissioners to appraise said lands. The said commissioners shall appraise said lands, and shall award to the owners thereof what they shall deem to be the full value of the same, and assess the damages
95 such owners may sustain by the taking of their lands, by injury to buildings, fences or lands, and in the construction of such road, without any deduction on account of any real or supposed benefit or advantage which such owners of said land may derive from the construction of such road; and shall be authorized to examine the land, to administer oaths and hear testimony, and shall make their appraisement in writing, without delay, under their hands, with a minute and accurate description of the lands appraised, with a map thereof, and shall report the same with the testimony taken to the court of chancery. The chancellor or vice-chancellor shall examine the report, and shall hear the parties, if

desired, and may increase or diminish the amount awarded, if he shall be satisfied injustice has been done. Upon proof to the chancellor or vice-chancellor, within thirty days after his determination of payment to the owner, or in cases where the owner shall, on a tender thereof, refuse to accept the same, or where such owner is an infant, or a married woman, or an idiot, or insane person, or a non-resident of the depositing to the credit of the owner in such bank as the chancellor or vice-chancellor shall direct, of the amount of such appraisement and the payment by the company of all expenses attending it, to be certified by the chancellor or such vice-chancellor; if not agreed upon by the parties, the said chancellor or vice-chancellor shall make a decree or order, particularly describing the lands and reciting the appraisement, and the mode of making it, and all other facts necessary to a compliance with this section of this act. And when the said decree or order shall be recorded in the office of the clerk of the county in which the land is situated (whose duty it shall be to record the same), the possession of said land shall be thereby confirmed to the said company, together with any legal and equitable right and title to the same for the purpose hereinbefore named. In case any married woman, infant, idiot, or insane person or non-resident, who shall not appear after such notice, shall be interested in any such land, the chancellor shall appoint
96 some competent and disinterested person to appear before the said commissioners, and act for and in behalf of such married woman, infant, idiot or insane person or non-resident. This section shall not be so construed as to deprive any individual through whose land said road may run of the right of crossing the same at suitable and convenient places for farming or other necessary purposes; nor to authorize the said corporation to take, except by agreement with the owner thereof, any timber, stone or other materials on any lands, except that on which the said rail road or way shall be constructed. The compensation of said appraisers shall be three dollars each for every day they shall be actually employed.

SEC. 3. If, within two years from the passage of this act, said road shall not be commenced in said Westchester county, and twenty-five thousand dollars expended thereon, and if the same shall not be finished within three years and put in operation, then this act shall be null and void.

SEC. 4. The said company is hereby authorized to construct a railroad with one or more tracks of suitable width or dimensions, to be determined by the said company, on the course designated by the directors as aforesaid; and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect station-houses and other necessary buildings for the accommodation of their concerns; and also, to fix, regulate and receive the charges by them to be received for the transportation of persons or property on the said road. Provided, always, that such charges for the transportation of any passenger and his ordinary baggage

shall not exceed in the aggregate the sum of three cents per mile on that part of said road within this State.

SEC. 5. Whenever it shall be necessary for the construction of their said road to intersect or cross any stream of water or water-courses, or any road or highway, it shall be lawful for the said company to construct their road across or upon the same;
97 but the company shall restore the stream or water-course, or road or highway thus intersected, as near as may be to its former state, so as not unnecessarily to impair its usefulness; and in respect to any road or highway as may be satisfactory to the commissioners of highways of the town in which such road or highway may be intersected or crossed.

SEC. 6. The said company before running any cars upon the said railroad shall erect and thereafter maintain upon the sides thereof (except where the said railroad shall intersect some public highway) a fence of such height and strength as is by law required as a division fence between the owners of adjoining lands; and shall also make and keep in repair wherever the same may be necessary upon the said railroad suitable guards to prevent cattle from running upon the same.

SEC. 7. The persons owning or occupying lands adjoining the said railroad are hereby authorized at proper and convenient places where they may have occasion to cross the said road for farming and other necessary purposes, to erect suitable gates in the line of the said fence, to facilitate such crossing, and to be kept in repair by persons using the same.

SEC. 8. Said company shall be liable to be sued by summons in the same manner as corporations created by the laws of this State; and said summons, in case the same cannot be served on the officers of said company as now provided by law, may be served upon any agent of said company.

SEC. 9. The road authorized to be built by this act shall be constructed with an iron rail weighing not less than fifty-six pounds to the yard.

SEC. 10. The legislature may at any time alter or repeal this act.

Now, therefore, resolved by this assembly:

1st. That the said act of the legislature of the State of New York be, and the same is hereby assented to and confirmed; and the said New York and New Haven Railroad Company is hereby authorized to accept the grant therein made, and may exercise and enjoy all the rights, powers and privileges conferred thereby.

2d. That the time limited by the 16th section of the act
98 incorporating the New York and New Haven Railroad Company, for expending one hundred thousand dollars upon their said road, is hereby extended for the period of two years, and the time therein limited for the completion of said road, is hereby extended for the period of four years, from and after the rising of this assembly."

"(*Laws of New York*, 1848, *Chap.* 143.)

An act to amend an act entitled 'An act relating to the New York and Harlem Railroad Company,' passed May 7th, 1840, and the acts amending the same; passed March 29th, 1848.

The people of the State of New York, represented in senate and assembly, do enact as follows:

* * * * * * *

SEC. 6. The New York and New Haven Railroad Company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business over the road of the New York and Harlem Railroad Company, from the point of junction of the roads of said companies at or near Williams Bridge, in the county of Westchester, to the city of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this State, and to take, transport and convey persons and property upon the said Harlem railroad, by the power and force of steam or animals or any mechanical power or combination of the same.

SEC. 7. This act shall take effect immediately."

"(*Laws of N. Y.*, 1866, *Chap.* 763.)

An act to incorporate 'The Harlem River and Port Chester Railroad Company;' passed April 23, 1866.

The people of the State of New York, represented in senate and assembly, do enact as follows:

99 SECTION 1. It shall be lawful for Governeur M. Wilkins, John Van Antwerp, Francis Morris, John Hunter, Peter J. M. Van Cortlandt, John Schuyler, Thaddeus Davids, Theodore Pine, Henry W. Clark, Nicholas W. Stuyvesant, Alexander W. Bradford, J. H. Wainwright, A. W. Greenleaf, all of the county of Westchester, and State of New York, and their associates, when duly formed into a corporation, under and pursuant to an act to authorize the formation of railroad corporations, and to regulate the same, passed April second, eighteen hundred and fifty, except as hereinafter provided, to construct, maintain and operate a railroad with all necessary depots, buildings, apparatus and fixtures, from some point at or near the Byram river, at the village of Port Chester, in the town of Rye, in the county of Westchester, and State of New York, to Harlem river, in said county, passing through or near the towns or villages of Port Chester, Rye, Milton, Mamaronec, Chatsworth, New Rochelle, East Chester, Pelham, West Chester, West Farms and Morrisania, and touching in its course points easily accessible from Rye Neck, Delancey Neck, City Island, Davids Island, Hart Island and Throgg's Neck; such road to be laid out on the most eligible route to accommodate passengers and freight to and from

the towns, villages and islands above named; and such corporation, when duly formed, may take and appropriate private property for the construction and maintenance of said road, under and in pursuance and in manner as by said act provided.

SEC. 2. Such road may be operated by steam or any other motive power.

SEC. 3. Whenever it shall be necessary, in the construction of said road, to intersect or cross any river or stream of water or water-course, navigable or otherwise, or any road or highway, it shall be lawful for the corporation to construct their road across or upon the same, but only in such manner as not to impair the usefulness of such river, stream of water, water-course, road or highway; and whenever it may be necessary so to cross any navigable river, stream of water or any road or highway, such corporation shall con-
100 struct and maintain substantial bridges, with suitable draws and viaducts with proper openings, over or across the same, whenever the same may be necessary.

SEC. 4. The corporators above named are hereby authorized to open books of subscription to the capital stock of the corporation, to be formed as provided in the preceding section, at such time and place as they may think proper, and may continue to receive subscriptions until the sum of one million of dollars shall be subscribed; such subscriptions may be for cash, or for such real or personal estate or property, or work as may be made available in building said road, upon such terms and conditions as may be mutually agreed upon by the corporators and the subscribers. Such property subscriptions shall not be taken for more than the fair value of the property subscribed, taking said stock at par.

SEC. 5. Whenever one thousand dollars per mile shall be subscribed, and ten per cent. thereon paid in cash, the corporators may call a meeting of the subscribers, to organize said corporation, and choose directors and officers for the ensuing year. Said meeting shall be in the village of West Chester, and twenty days' notice shall be given of the time and place of such meeting, by publication in the county paper. The corporators shall appoint tellers at the first election of directors, and each share shall be entitled to one vote. The directors when chosen shall appoint one of their number president, and may appoint a secretary and treasurer, and such other officers and agents, as shall be prescribed by the by-laws of the company.

SEC. 6. All the powers conferred by this act on the corporators named in the first section, shall vest in and be conferred on the directors elected by the stockholders; and until such elections the persons named in said section shall be directors of the company hereby formed, and they shall make all such by-laws, rules and regulations, and appoint and employ all such officers, engineers, agents and workmen as they may deem necessary and expedient in carrying out the objects of this incorporation.

101 SEC. 7. The corporation may take and hold by grant, gift or purchase any personal property or real estate necessary to the construction of said road, and such other real estate lying in

the towns or villages through which the route of said road shall be located, and which the directors may deem necessary or expedient for said company; and may sell, lease, convey in any trust, or mortgage any of its lands or effects as the directors may deem advisable for the purposes aforesaid; and may from time to time borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt; and five years is hereby granted said corporation to build and complete said road after the passage of said act.

SEC. 8. But nothing herein contained shall confer any power upon the corporation herein named to take or use any lawn, garden or pleasure grounds belonging to any person; nor shall they have the power to do so.

SEC. 9. This act shall take effect immediately."

"(*Laws of N. Y.*, 1869, *Chap.* 722.)

An act to amend an act entitled 'An act to incorporate the Harlem and Port Chester Railroad Company;' passed May 8, 1869.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section one of chapter seven hundred and sixty-three of the Session Laws of Eighteen hundred and sixty-six is hereby amended to read as follows:

102 SECTION 1. It shall be lawful for Gouvenier M. Wilkins, John Van Antwerp, Francis Morris, John Hunter, Peter J. M. Van Courtlandt, John Schuyler, Thaddeus Davids, Theodore Pine, Henry W. Clark, Nicholas W. Stuyvesant, Alexander W. Bradford, J. Howard Wainwright, A. W. Greenleaf, all of the county of Westchester and State of New York, and their associates, when duly formed into a corporation under and pursuant to 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, except as hereinafter provided, to construct, maintain and operate a railroad, with all necessary depots, buildings, apparatus and fixtures, from some point at or near the Byram river, at or near the village of Port Chester, in the town of Rye, in the county of Westchester and State of New York, to the Harlem river, in said county, passing through or near the towns or villages of Port Chester, Rye, Mamaroneck, Chatsworth, New Rochelle, Pelham, East Chester, West Chester, West Farms and Morrisania, and touching in its course points easily accessible from City Island, Davids Island, Hart's Island, and

Throgg's Neck. Such road to be laid out on the most eligible route to accommodate passengers and freight to and from the towns, villages and islands before named; and such corporation, when duly formed, may take and appropriate private property for the construction and maintenance of said road under and in pursuance and in manner as by said act prescribed.

SEC. 2. Section eight of said act is hereby repealed.

SEC. 3. The line or track of the road mentioned in the first section of this act shall not be located within four hundred feet of the Southern boulevard, or cross the same within the town of West Farms, unless with the unanimous consent of the commissioners of the said boulevard.

SEC. 4. This act shall take effect immediately."

I will now read the testimony of Charles P. Clark, the
103 president of the New York, New Haven and Hartford R. R. Co., taken on the indictment proceedings last spring, as to some facts I desire to prove as to mileage, at page 307 of the printed case.

Charles P. Clark.

"Q. The line of the railroad of the N. Y., N. H. & H. Co. is now extended to Springfield in Massachusetts?

A. Yes."

DEFENDANT'S COUNSEL: You now concede such was the fact at the time of the violation complained of?

PLAINTIFF'S COUNSEL: If he so states.

(Reading continued:)

"Q. It runs from there to Hartford—from Springfield to Hartford?

A. From Springfield to Hartford via the New York and New Haven; from New London to New York; from Willimantic; from Turner's Falls in Massachusetts to New York via New Haven; from Winsted in Connecticut to New York via Bridgeport; and from New Canaan to Stamford, with some intermediate branches in Connecticut, and the line from New Rochelle to Harlem river.

Q. What is the distance in mileage owned by the N. Y., N. H. & Hartford road in this State?

A. We operate either by ownership——

Q. I want the ownership first. The N. Y., N. H. & H. R. R. Co. owns a line of railroad in this State?

A. The exact mileage I shall have to look at.

Q. You run over the Harlem railroad into the city of New York?

A. Yes.

Q. You own your own line until you connect with the Harlem railroad?

A. From Port Chester.

Q. You strike the Harlem railroad a little above Williams Bridge?

104 A. Yes; Woodlawn Junction and run to New York from that point about 13 miles.

Q. That is, from the point where you strike the Harlem railroad?

A. Yes.

Q. The cars of the N. Y., N. H. & H. road run in over the Harlem road into what may be called the Grand Central system?

A. Yes.

Q. Where does the Grand Central system commence?

A. At Mott Haven."

DEFENDANT'S COUNSEL: We offer in evidence the lease under which the defendant runs in over the Harlem road, and which was ratified by that act of the legislature of 1848 which was read in evidence.

Paper marked "Exhibit No. 2."

The following is a copy of the lease:

"This agreement and contract of transportation made and concluded this seventeenth day of March, in the year one thousand eight hundred and forty-eight, between the New York and Harlem Railroad Company of the one part, and the New York and New Haven Railroad Company of the other part, witnesseth, as follows:

First. It is mutually understood and agreed that this agreement shall stand in the place and stead of a certain agreement heretofore made between the said parties, bearing date the twenty-second day of January, eighteen hundred and forty-six.

Second. It is mutually understood and agreed that the point of junction and connection of the railroads of the two companies at or near Williams Bridge, as now located one mile and sixty-two chains north of the present depot or station-house of the New York and Harlem Railroad Company at Williams Bridge be, and the same is hereby, confirmed, approved and adopted.

Third. It is mutually understood and agreed that the
105 New York and New Haven Railroad Company shall, on or before the eleventh day of May, eighteen hundred and forty-nine, construct and finish their said road from the point of junction aforesaid to Byram river.

Fourth. It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction to Byram river, they shall have the right to run their trains, engines and cars for the transportation of passengers, mails, expresses, freight, &c., over the track or tracks of the road of the New York and Harlæm Railroad Company from the point of junction aforesaid to and into the city of New York, and as far over the same in the said city as the said company's road shall extend, not, however, below the intersection of said railroad and Pearl street, in said city, the said New York and New Haven Company furnishing their own haulage.

Fifth. It is mutually understood and agreed that in the arrangement of the trains of the two companies preference shall be given to the through trains of the New York and New Haven Railroad

Company over the way or freight trains to be run by the New York and Harlaem Railroad Company, and in like manner a preference shall be given to the through trains of the New York and Harlaem Railroad Company over the way and freight trains of the New York and New Haven Railroad Company, and upon this principle the mode of running the trains of the two companies shall be adjusted from time to time by the said companies, or such officers as they may respectively appoint or designate to make such arrangements for running their several trains, so as to insure the greatest speed, accommodation and safety to passengers, &c.

Sixth. It is mutually understood and agreed that the New York and New Haven Railroad Company shall pay, in the manner hereinafter provided, and the New York and Harlaem Railroad Company shall receive, as full compensation for the use and occupation of their track or tracks as aforesaid, a certain sum for each passenger transported by the said New York and New Haven Rail-
106 road Company in their several trains, to be dependent upon and adjusted by the total number so transported daily, according to the following scale. For any number not exceeding one thousand (1,000) *per diem*, at the rate of fourteen (14) cents each.

For any number not exceeding twelve hundred and fifty (1,250) but over one thousand (1,000) *per diem*, at the rate of twelve (12) cents each.

For any number not exceeding fifteen hundred (1,500) *per diem*, but over twelve hundred and fifty (1,250) at the rate of ten (10) cents each.

For any number not exceeding seventeen hundred and fifty (1,750) *per diem*, but over fifteen hundred (1,500) at the rate of nine (9) cents each.

For any number not exceeding two thousand (2,000) but over seventeen hundred and fifty (1,750) *per diem*, at the rate of eight and a half cents (8½) each.

For any number not exceeding twenty-five hundred (2,500) but over two thousand *per diem* (2,000) at the rate of eight (8) cents each.

For any number not exceeding three thousand (3,000) but over twenty-five hundred (2,500) *per diem*, at the rate of seven and a half cents (7½) each.

For any number not exceeding thirty-five hundred (3,500) *per diem*, but over three thousand (3,000) at the rate of seven cents (7) each.

For any number not exceeding four thousand (4,000) *per diem* but over thirty-five hundred (3,500) at the rate of six and a half cents (6½) each.

For any number exceeding four thousand (4,000) *per diem*, without farther limit, at the rate of six (6) cents each.

Seventh. It is mutually understood and agreed that the New York and New Haven Railroad Company shall and will make monthly payments in pursuance of the above covenant, calculated from the daily returns of the month for which payment is made.

Eighth. It is mutually understood and agreed that a system of

commutation and the terms thereof, and for running express
107 engines, shall be adopted by the two companies as soon as they shall deem it judicious and necessary and may arrange the details of such system.

Ninth. It is mutually understood and agreed that an allowance shall be made and paid by the New York and New Haven Railroad Company to the New York and Harlem Railroad Company of such portion of the amount which they may actually receive for the transportation of mails, express trunks, crates and packages, and for goods, wares, produce and merchandise generally as shall hereafter be agreed upon *upon* the following principle, that is to say, the New York and New Haven Railroad Company shall retain a fixed amount for the station expenses at the point from which the above business is received, and also that to which it is delivered, and in like manner, for the mail service, for the expenses of transportation to and from the several post-offices, and the railroad. They shall also retain a proper and adequate amount for the transportation or haulage to be done by them as aforesaid over the roads of the New York and Harlæm and New York and New Haven Railroad Company, and the balance which may then remain shall be apportioned ratably as to the distance which may have been used of the roads of the two companies respectively.

Tenth. The New York and Harlæm Railroad Company do further covenant to furnish to the New York and New Haven Railroad Company room for their engine and car house at Thirty-third street and Forty-second street, in no event to exceed one-half the New York and Harlæm Company's real estate at those places at the rate the same cost the New York and Harlem Company, being principal and interest upon the investment for that purpose, to be decided upon by the New York and New Haven Railroad Company within thirty days after the said company is furnished with a statement of the cost of said properties respectively.

Eleventh. It is mutually understood and agreed that the New York and Harlem Railroad Company shall, without delay, proceed to grade and construct a second line of rails or track with
108 heavy H rails from the termination of their present double track to the aforesaid point of junction, which second track is to be made in a manner to be approved by the chief engineers of both roads, and to be completed and ready for use on or before the completion of the road of the New York and New Haven Railroad Company from said point of junction to Byram river, now supposed to be on or about the first of October next; but it is further understood and agreed that the New York and New Haven Railroad Company shall, and will, upon the request of the New York and Harlem Railroad Company, loan and advance to them the sum necessary for the construction of the said second track by instalments as the work advances, or upon the execution of contracts for the same with responsible parties satisfactory to the New York and New Haven Railroad Company, but this mode of payment shall be at their option, to be secured by the bonds of the said New York and Harlem Railroad Company, payable five years after date, bearing in-

terest at the rate of seven per centum per annum, payable half-yearly, secured by the mortgage of said second track and appurtenances.

Twelfth. It is mutually understood and agreed that if the New York and Harlem Railroad Company shall by any unfor-seen impediment be prevented from completing the new bridge over the Harlem river, required for the construction of the said second track, within the time limited in the next preceding article of this agreement, the time for completing the same shall be extended, without affecting the other stipulations of this agreement.

Thirteenth. It is mutually understood and agreed that the New York and Harlem Railroad Company shall keep its road from the aforesaid point of junction to the termination of the part thereof to be used by the New York and New Haven Railroad Company in good and sufficient repair to ensure the greatest speed, accommodation and safety to passengers.

Fourteenth. It is mutually understood and agreed that this agreement shall continue in force and be binding upon both com-
109 panies during the term of their charters respectively and for all renewals thereof, but either party may terminate the covenants for compensation, numbers six, seven, and eight and nine of this agreement, upon any day after the expiration of three years from the commencement of the use of the road of the New York and Harlem Railroad Company by the New York and New Haven Railroad Company, of which not less than twelve months' notice shall have been given in writing to the other. But in that event it is mutually understood and agreed that the two companies shall, and will forthwith on service of said notice, proceed to arrange the terms of new covenants for the above purposes, and if they cannot agree upon the terms of said new covenants, then the matters or points in disagreement shall be submitted to arbitrators in the usual mode, whose award shall be binding upon the parties and be embodied in the said new covenants for the ensuing five years, and at the end of each succeeding five years new covenants in regard to compensation shall be made in like manner upon like notice being given by either party.

In witness whereof the said New York and New Haven Railroad Company and the said New York and Harlem Railroad Company have caused this agreement to be duly executed in duplicate this seventeenth day of March, in the year one thousand eight hundred and forty-eight, under their respective seals, and attested by the signatures of their presidents.

CHARLES PASSHALL,
Pres't N. Y. and Harlem R. R. Co. [SEAL.]
ROBERT SCHUYLER,
Pres't New York and New Haven Railroad Company. [SEAL.]

Additional article. It is hereby understood and agreed that no fare shall be charged on the New York and New Haven railroad below twenty-five cents from any point near the Harlem railroad so as to interfere with the local fare of said Harlem Company, pro-

vided, however, that if the New York and Harlem Company
110 shall reduce their present fare to Williams Bridge of twenty-five cents, the New York and New Haven Company may also reduce *pro rata* below twenty-five cents, and that no way passengers shall be taken by the New Haven Company between Williams Bridge and the city of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

On the fifth day of April, one thousand eight hundred and forty-eight, before me came Charles Passhall, known to me to be the same individual who is the president of the within-named corporation styled 'The New York and Harlem Railroad Company,' and being by me sworn, he saith that he resides in the city of New York and is such president as aforesaid, that the seal first affixed to the within instrument is the corporate seal of the said corporation, and that it was so affixed thereto and said instrument executed and delivered by their authority; and on the same day before me also came Robert Schuyler, known to me to be the same individual who is the president of the within-named corporation styled 'The New York and New Haven Railroad Company,' and being by me sworn, he saith that he resided in the city of New York and is such president as aforesaid, that the seal secondly affixed to the within instrument is the corporate seal of the said company, and that it was so affixed thereto and said instrument executed and delivered by their authority, all of which is to me satisfactory evidence of its due execution.

D. HOBART,
Comm. of Deeds."

DEFENDANT'S COUNSEL: I read again at folio 1236 of the printed case referred to, page 309:

"Q. There is one lease, isn't there, for the New York and Harlem road; and that is another called the 'tripartite agreement,' which governs from Woodlawn down to the Grand Central system?

A. You are not quite accurate.

Q. Make it accurate?

111 A. There was a contract made between the New York and Harlem and the New York and New Haven road in 1848, I think, by which the New Haven road had a right previously to run its trains—by which it was agreed that the New Haven road might run its trains over the line of the Harlem to its terminus, which, I think, then was at Canal street, from a point at or near Williams Bridge. That contract, as I understand it, was ratified by the legislature of the State of New York, and under that contract the New York, New Haven and Hartford R. R. Co, the successor of the New York and New Haven, is running its trains over the Harlem road to New York. Some years subsequently, and after the provisions of the contract called the 'tripartite lease,' certain rights were acquired by the New York and New Haven, and certain rights were

given up, and that is a matter of record in the lease which is in this case.

Q. It is under this latter lease that your trains run into the city of New York from the point called Woodlawn Junction?

A. Mott Haven Junction.

Q. Are you familiar with the provisions of this document?

A. In a general way."

DEFENDANT'S COUNSEL: I read at folio 1252, page 313, of the same case:

"Q. As regards the business done by this road, you carry passengers?

A. We did.

Q. Between the States of Massachusetts, Connecticut and New York?

A. Yes.

Q. You also carry freight?

A. Yes.

Q. You are engaged in interstate commerce?

A. Yes."

DEFENDANT'S COUNSEL: I now read from the testimony of Lucius Tuttle, page 169 of the same case:

112 "Q. You are familiar with this whole line of road?

A. I am.

Q. It runs from Springfield to New Haven?

A. Yes.

Q. The company owns its line in Springfield, from Springfield to New Haven?

A. Yes.

Q. And it owns its line from New Haven down to where it strikes the Harlem road at Williams Bridge?

A. It does.

Q. And from there it comes in over the Harlem road, does it not?

A. Yes.

Q. Until it strikes the Grand Central system?

A. Yes.

Q. Where does the Grand Central system commence?

A. You mean the Harlem line? It is all the Harlem road from Woodlawn Junction to the Grand Central depot."

* * * * * * *

"Q. The line of the N. Y., N. H. & H. Railroad Co., which is owned by it strikes the Harlem road a little ways above Williams Bridge?

A. Yes.

Q. And that is in Westchester county?

A. Yes."

* * * * * * *

(Page 170:)

"Q. Do all the cars of the N. Y., N. H. & H. R. R. Co. come into the city of New York?

A. They do not.

Q. Do a considerable number of them never come into the city of New York?

A. Probably the larger proportion.

Q. Has this New York & New Haven R. R. any branch lines?

A. It has.

Q. Do you know the entire mileage of that system?

A. It is 572 miles and a fraction.

Q. That includes the branches?

A. Yes.

113 Q. Between what places are passenger trains run other than New York city, or other than the State of New York?

A. Do you mean all the branches of the line and all the junctions?

Q. Yes, outside of this State?

A. From New Haven to Springfield with branch trains to Middletown, New Britain; from New Haven to Willimantic, with branch trains to Colchester; from New Haven to New London; from New Haven to Sherburne, with trains to Holyoke, and North Hampton to Hadenville; from Naugatuck Junction, near Bridgeport to Winsted, with branch trains to Watertown; also a branch from New Haven to North Hampton, and from Farmington to New Hartford—I think I have mentioned the different lines. There is a valley division also from Seybrook down to Hartford.

Q. I understand you to say there are a great many cars go over this railroad which are used entirely upon those lines and never come into the city of New York?

A. There are.

Q. More than the majority of the cars?

A. I should say so; yes."

DEFENDANT'S COUNSEL: I want to know if you will admit this. Of the 26 miles of road alleged in the complaint as being operated by the defendant in the State of New York, about 13 miles is owned by it between the State line and the junction of the Harlem railroad, and the other 13 miles is operated under the lease we have offered in evidence?

PLAINTIFF'S COUNSEL: That is as we understand it.

DEFENDANT'S COUNSEL: There is no doubt of that?

PLAINTIFF'S COUNSEL: No. I would like to have it appear clearly on the record that the line operated by the defendant is one continuous line from the Grand Central depot to Springfield, Mass., passed through the places Mr. Clark has specified in his evidence.

DEFENDANT'S COUNSEL: Yes; it is stipulated that the en-

114 tire line of railroad, whether in the State of Massachusetts, Connecticut or New York, owned or operated by the defendant, is one continuous line of railroad.

HENRY W. TAFT, sworn for defendant, testifies:

Direct examination by Mr. BOWERS:

I am one of the attorneys of the defendant. I am familiar with the operation of the road generally, with its length and its business generally. I know whether it is engaged in interstate commerce. It is the main line of railroad between this city and Boston and the Eastern States. It is the connecting road. It is the only connecting direct road. There are dispatched on this road from the city of New York alone, I think, over 100 passenger trains a day, and a very large number of freight trains.

Q. And the road carries between the States of Massachusetts, Connecticut and New York, in the course of its ordinary business, thousands and thousands of passengers, does it not?

A. Yes; it does, and millions of tons of frieght.

Q. Do you know what the regulations of the State of Connecticut are as to the heating of cars?

A. I don't know what they are now; I know what they were at the time of the alleged violations of this law, set forth in the complaint in this action. At that time the Baker heater had been expressly approved by the commissioners of railroads in the State of Connecticut.

PLAINTIFF'S COUNSEL: We would like to make an objection to this evidence as immaterial. I mean as to all of this evidence.

Objection overruled; exception.

Q. The system of heating known as the Baker heater system is the system that has been proved under the stipulation here today, is it not?

A. I believe it is.

Q. There is no doubt about it, is there?

A. No; there may be some differences in detail, but generally the system is the same.

115 Q. The system approved by the laws of the State of Connecticut is the same system as proved here today, is it not?

A. Yes.

Q. As to Massachusetts, is the use of Baker heaters approved by the laws of that State, or was it at the time specified?

A. Yes; it was.

Q. How long has the use of Baker heaters been in existence on the defendant's road?

A. I believe since 1868.

Q. Do you know whether experiments were made from time to time, and investigation by the defendant and its officers, as to the safest method of heating its cars?

Objected to. Overruled. Exception.

A. I do.

DEFENDANT'S COUNSEL: I want to show that this system of heating is the safest known to the law.

Objected to as immaterial.

The COURT: I think I should sustain the objection.

DEFENDANT'S COUNSEL: The defendant offers to show that the system of heating by the Baker heater is the safest and best system of heating cars that was in existence at the time of the alleged violations.

Objected to. Sustained. Exception.

Q. It is the fact, is it not, that the legislature of the State of Connecticut passed an act some years ago appointing certain railroad commissioners with general authority to make directions as to the management of the roads in that State?

A. Yes.

116 Defendant's counsel offers the act referred to in evidence, and it is to be considered in the record.

WITNESS: It is a portion of the revised statutes of the State of Connecticut.

It is stipulated between the parties that the sections referred to may be considered in the record.

PLAINTIFF'S COUNSEL: Reserving our objection that the evidence is immaterial?

The COURT: I think it should go in the record.

The sections in question are as follows:

"SEC. 3413. There shall be three railroad commissioners."

"SEC. 3426. The railroad commissioners shall, from time to time, recommend in writing to the several railroad companies, or any of them, the adoption of such measures and regulations as such commissioners deem conducive to the public safety and interest, and shall report any neglect to adopt such recommendations to the next General Assembly."

"SEC. 35–9. The railroad commissioners may make any and all orders which shall seem to them to be required by public safety and prudence relative to heating and lighting passenger cars, and shall report any neglect by any railroad companies to comply with such orders to the General Assembly at its next regular session."

DEFENDANT'S COUNSEL: I offer in evidence an order made by these railroad commissioners on the 10th of July, 1889.

Objected to on same grounds as before. Overruled. Exception.

Paper marked "Ex. 3," being dated July 10, 1889, and directed to the N. Y., N. H. & H. Railroad Co. Paper read.

117 The following is a copy of it:

"State of Connecticut, office of the railroad commissioners.

HARTFORD, *July* 10, 1889.

To the New York, New Haven and Hartford Railroad Company.

GENTLEMEN: In accordance with the authority conferred upon us by section 3568 of the General Statutes, requiring us to make such orders relative to the heating and lighting of passenger cars

as are required by public safety and prudence, you are hereby ordered not to permit any car heated by a common stove, or by any system of direct radiation, to be attached to any passenger train while being used for the transportation of passengers upon the roads operated by you, nor to permit any car to be so attached or used heated otherwise than by steam or by the Baker or Spear system, without special authority in writing from us; and we recommend that you do not equip or purchase any cars equipped with any system of heating which cannot be readily adapted to the use of steam or hot air. We believe that some system of continuous heating will soon be perfected which can be prudently and safely adopted, but the practical experience of the mechanical departments of our roads with the various systems now being tested has not been such as to assure us that the comfort and safety of the traveling public would be increased by the substitution of any one of them for the most approved systems of car-heating now in use. Experience proves that no system will secure perfect safety from fire so long as the danger from the locomotive and from the cooking ranges in dining cars continues.

In regard to the lighting of passenger cars, if our former order requiring the use of illuminating oil of 300° fire-test is complied with, we apprehend no greater danger than would result from the use of an engine to generate electricity for lighting purposes.

118 Further experiments should be encouraged for the purpose of developing some system of train-heating which will give a uniform temperature throughout the cars of our longest passenger trains, attended by the fewest possible elements of danger from fire, or from the explosion of steam in case of accident, collision or overturning of cars.

GEORGE M. WOODRUFF,
WILLIAM H. HAYWARD,
WILLIAM O. SEYMOUR,
Railroad Commissioners."

That order was still in force at the time of the alleged violations complained of in this action.

PLAINTIFF'S COUNSEL: That was subsequent to the time complained of.

The system of heating referred to in this order as the Baker system of heating was the same system that has been proved here in this case today, and was the system that had been in use since 1868 on that road in the State of Connecticut, with the sanction and approval of the railroad commissioners of the State of Connecticut. The railroad commissioners' report of the State of Connecticut is not here today.

DEFENDANT'S COUNSEL: We offer in evidence the annual reports of the railroad commissioners for the State of Connecticut for 1887, 1888 and 1889. It is stipulated between the parties that such extracts may be put on the record as the defendants may deem material to their case.

The following is an extract from the Connecticut railroad commissioners' report of 1888:

"In view of the present condition of the question of steam-heating of railroad cars, as outlined above, we have thought that neither public safety nor prudence required us to order the immediate adoption of that mode of heating on the roads in this State. We have, however, notified the companies that the practicability
119 of continuous heating seemed to be so far demonstrated that, unless the present winter develops unexpected difficulties, they may expect an order to provide for heating their passenger cars after this season by some system of continuous heating and not by fires in the cars, and directing that all new passenger cars built or purchased should be so equipped."

The following is an extract from the Connecticut railroad commissioners' report of 1889:

"The General Assembly of 1887 passed an act approved May 4th, as follows:

"SECTION 1. It shall be the duty of all railroad companies, trustees in possession and receivers operating any railroad in this State to report to the board of railroad commissioners, in their several returns for the year 1887, the system of lighting and heating in use upon the passenger cars of their several roads.

SEC. 2. After the first day of November, 1887, the board of railroad commissioners may make any and all orders which shall seem to them to be required by public safety and prudence relative to heating and lighting passenger cars, and shall report any neglect by any of said companies, trustees in possession or receivers to comply with such orders to the next General Assembly."

"Pursuant to the authority conferred by this act, after the required return had been received, on the 13th of December, 1887, we issued our orders directing that no mineral oil of less than three hundred degrees fire-test be used for the lighting of passenger cars, and directing that all new passenger cars thereafter built or purchased be equipped for continuous heating. We also gave notice that a subsequent order might be expected requiring, by the present season, that all passenger cars should be provided with some system of continuous heating instead of by stoves. Our action and the reasons for it were fully given in our report last year. When those orders were issued we confidently expected that the experience
120 of the past winter would so far solve the difficulties involved in the system of continuous heating as to justify us in ordering that all trains other than mixed or freight trains should be so equipped before this time. But these orders brought out the fact that many of our most intelligent and experienced railroad men questioned whether any system of continuous heating had been sufficiently perfected to be safe and adapted to a promiscuous passenger-car service without at — time subjecting passengers to considerable discomfort and possible danger.

"So firmly convinced were the managers of our roads that the time had not come for the general use of steam-heating, that they felt justified in disregarding our direction that their new passenger

cars be equipped for continuous heating, and suffer such neglect to be reported to the General Assembly. Neither the New York, New Haven and Hartford, the Housatonic, the Meriden, Waterbury and Connecticut River, nor the New York, Providence and Boston, all of which companies have either bought or built new passenger cars, have equipped them for steam-heating, but the New York, Providence and Boston Company have fourteen of their old cars so equipped, five with the Martin system, five with the New York Safety Car Heating Company's system, and four by a system of their own, and the New York and New England has equipped twenty-seven new cars and forty-three old ones for continuous heating, by the J. A. Shinn system, and the New London Northern has three cars equipped for steam-heating. These adverse views led us to somewhat distrust the correctness of our own opinions. This distrust was increased by the fact that the experience of the winter was not so entirely satisfactory as was generally expected. So unsatisfactory was it that the Massachusetts legislature, which in 1887, as the first step towards continuous heating, had prohibited the use of common stoves in passenger, mail or baggage cars, and also prohibited any method of heating not approved by the railroad commissioners, thought best after the experience of last winter by a resolution approved so late as May 29, 1888, to direct the commissioners to
121 further investigate the subject of heating and lighting, and report to this present session, and in the meantime to continue in force approvals of the methods of heating which had then been granted. This action of the legislature was taken after the commissioners had upon investigation made a special report on the first of May, in which they had expressed the opinion that the system of continuous heating was not only practicable and conducive to the comfort and safety of passengers, but also desirable as a measure of economy, and also declaring their purpose, unless otherwise specially instructed by the legislature, to notify the companies that the use of separate heaters in or under the cars after October 1, 1889, would only be approved under exceptional circumstances. The cost of substituting continuous heating for the modes now in use in the more than one thousand passenger train cars of our companies would be very great, and ought not to be required unless the comfort and safety of passengers demand it. As to comfort is is far from being demonstrated that steam-heating adds to the comfort of passengers, or is in this respect any improvement over other approved methods, while other things being equal, the advantages of separate heaters for each car for general service are self-evident. So far as we know, none of the systems of continuous steam-heating can be so absolutely relied on under all circumstances as to render it practicable to remove the separate heaters from the cars.

These must still be retained and be ready for use in emergencies, or to say the least much suffering is liable to occur. Had the trains on our Connecticut roads been dependent on any known system of continuous heating at the time of the March blizzard, loss of life might have been added to the discomforts of those days. We were, therefore, led to inquire whether safety required, or was to be pro-

moted, by the substitution of continuous steam-heating for other approved heaters. Against steam-heating it is claimed that it is simply substituting the danger of being scalded for that of
122 being burned, and that so long as safety from the first so largely depends on the spring of the reducing valve always doing its work, the danger is constantly threatening, and that this is a danger which this mode of heating has not been long enough in use to fully develop. That it is a real and not merely a possible or theoretical danger is recognized everywhere. In all systems of continuous heating efforts are made to guard against it in various ways, by reducing valves at the engine, and by so constructing the couplings that they will blow off before a pressure is reached that would burst the pipes in the cars. This danger was recently forcibly emphasized by the bursting of a steam pipe in a car on the Illinois Central railroad, resulting in a panic and rush for the doors, in which several persons were thrown down and bruised, but escaped scalding. The Master Car Builders' Association is perhaps as competent and unprejudiced a body as any investigating this subject. Its committee reported at the last annual meeting in regard to this danger from high pressure of steam, that it should be kept as low as possible, and that the rupture of a highly charged steam pipe in a car filled with passengers would prove quite as disastrous as the so-called 'deadly car stove.' They also comment on the probability of occasional failure of the appliances, and say that to best provide for such emergencies is still one of the unsolved problems. In view of the importance of the subject, its difficulties and the differences of opinion, they were unprepared to make any definite recommendations, and suggested that the investigation be continued through the year. The great preponderance of opinion on this subject as expressed by railroad managers recently, in answer to circulars sent out by the railroad and warehouse commissioners of Minnesota, was that either no good method of steam-heating had yet been devised, or if it had, the experiments had not yet been sufficient to establish the fact, while in cases of accident, the danger to passengers was equal to that from stoves in the cars.

"There is another question in regard to this subject which is worthy of consideration, and that is, whether the objection
123 to separate heaters is not properly an objection to the kind rather than to the method. It is stated, and so far as we know it is not denied, that the only instance in which fire was communicated to a car from a Baker heater was in the rear collision on the New York Central and Hudson River railroad, in which Mr. Wagner and others lost their lives. Since then the flexible steel case, or armor, has been adopted for these heaters, with safety doors and grates. Fortunately, no accident like the one referred to has occurred to test the efficiency of this armor, but it would seem to be sufficient for the purpose. A large majority of the passenger cars on our roads are equipped with the Baker heaters, though of the old style.

"We had no wish to issue an order simply that we might report the neglect to comply with it, and if the facts were adjudged suffi-

cient to justify the neglect to comply with our directions as to new cars, it was not to be expected that a like order in regard to all the old ones would have been obeyed.

"Under all the circumstances, therefore, it seemed to us unwise to issue an order requiring continuous steam-heating to be substituted for existing modes before the commencement of the present season. Neither have we, as yet, ordered heaters of the Baker type to be substituted for the stoves and other kind of heaters in use, although such an order would be within the scope of our authority, for we thought it probable that further experiments in steam-heating might justify, or further legislation might require other changes within the year. We believe that the difficulties in the way of continuous heating are no greater than many others which have been overcome in advancing the comfort and safety of railroad travel. It appears to be another movement in the same direction, and one which is steadily and surely progressing, though not so surely and rapidly as was hoped for.

"It has only recently come to our knowledge that of the three companies which were instrumental in securing the action of the Massachusetts legislature last May, one has since fitted up most
124 of its cars for steam-heating. The annual report of the Boston and Albany expresses the hope that the coming winter will find all its passenger cars, except those in mixed trains, heated by steam from the locomotive, as they believe that this method of heating long since passed the experimental stage. We are, however, informed that the thermometer indicates a difference of nearly twenty degrees between the drawing-room cars and the coaches in the rear on the New York and Boston express trains heated with steam.

"So considerable, and in the State of New York so complete, has been the adoption of continuous heating that the present winter must demonstrate the success or failure of the system and determine what action should be taken in this State. We believe it will prove a success, and that those of our railroad managers who now think it impracticable and unsafe, will voluntarily be led to its adoption, and should the opinion of the attorney general of New York be sustained our companies will be compelled so to equip their trains running into that State.

"It is, however, our purpose, before the adjournment of this General Assembly, to give a hearing to the railroad companies and others upon this subject, and then make such special report upon the subject as may seem best, in time for the legislature to take further action should it be thought necessary and proper.

"In the meantime very little anxiety need be felt in regard to the modes of heating now in use on the railroads in this State. It is only on the lines with little travel that stoves, as distinguished from heaters, are used, and these are of improved construction."

Cross-examined by Mr. POSTE:

Q. It is stated in the answer that the defendant runs over 100 passenger trains in both directions, and only three of those trains

do not go into the State of Connecticut—you understand that is a correct statement of the facts, is it?

A. I don't get the entire paragraph there.

125 Q. (Showing paper.) It is right at the top of the page?

A. Yes, that is substantially true. That is to say, there are some of these trains which run wholly within the State of New York and I understand that that is true, or it is my recollection that it was true during the months of November and December, 1888.

By DEFENDANT'S COUNSEL:

Q. As a matter of fact those trains that run wholly within this State were heated in accordance with this statute—the only trains that were so heated were the trains that were running from one State to another?

A. You can bring that out in the deposition of Mr. Clark.

PLAINTIFF'S COUNSEL: We would like the facts testified to as to that.

By Mr. POSTE:

Q. The only approval that you have reference to in your testimony as having been made by the railroad commissioners in the State of Connecticut of the Baker heater is that which is contained in this order of theirs of July 10, 1889, is it not?

A. The reports of the commissioners will show that, but my present recollection is that the Baker heater was also expressly approved by the commissioners prior to the date of this notice to the railroad companies in some of their annual reports, but the annual reports will show that. The reports are in evidence. Of course from those reports there will be only brief extracts, but the pages will be specified. There was no other approval than this order and such forms of approval as appears in the report, except the acquiescence and knowledge of their use.

Q. I mean an expressed approval.

A. An expressed approval, no.

Q. Do you understand that the commissioners of the State of Massachusetts ever took any action *pro* or *con.* in regard to the propriety of the use of the Baker heater in the State of Massachusetts?

126 A. I don't think they ever did. I have no recollection of it.

Q. Has there been any statute of the State specifically addressed to the point as to whether the Baker heater was the correct method of heating or not?

A. I can only testify as to an impression as to that. I have a general recollection that since the accruing of this action or this cause of action, an act was passed by the legislature of Massachusetts requiring steam heat and it was immediately repealed, being in force only a few weeks. Aside from that, I don't think the subject has received any legislative attention in the State of Massachusetts.

By Mr. BOWERS:

Q. But the Baker heater has been used there without objection on the part of the authorities?

A. From the time I mentioned in 1868, I understand that it has been used there constantly.

DEFENDANT'S COUNSEL: Mr. Clarke testified to this at page 306 of the printed case already referred to:

"Q. Since the 1st of November, 1888, have you ever given an order for the equipment of any cars for the purpose of heating the same?

A. I think I have directed the general manager, in the purchase of a lot of twenty cars, to be used in the State of New York, to have them equipped with one of the steam systems.

Q. Other than that have you ever given any direction since the 1st of November, 1888, for the equipment of any passenger car for the purpose of heating—so far as the purpose of heating is concerned—for use in the State of New York?

A. No."

Then came this question at page 313 of the same case:

"Q. I want to ask you as to that order you have for equipping some cars in this State with steam heat. Where were they to be used?

127 A. Between the Harlem river and Port Chester for special service mainly within the State."

The inference from this evidence, and from what he told me at the time was that those cars were equipped especially for use in this State, and they wanted to comply with the laws of the State in that regard. I don't want the case to go up with any misapprehension with regard to our violating the law with regard to cars not used in this State.

By Mr. BOWERS:

Q. The cars of the road that were operated within this State only, after the passage of this act, complied with its terms as to their manner of heating, did they not?

A. My impression is that they were all heated with the Baker heater.

Q. I mean the cars—you just heard the evidence of Mr. Clark read.

A. Oh, those cars, yes. Those cars that were referred to in that testimony were heated just as the elevated railroad cars are heated, by the Gold system I think it is.

DEFENDANT'S COUNSEL: Do you intend to make a claim that we violated the statute with trains run only in this State?

PLAINTIFF'S COUNSEL: We have relied on your answer in regard to that. There is no claim made in your answer that you ever equipped the cars which were operated solely in this State with any other heater than the Baker heater. We don't want anything but the facts in the case.

WITNESS: I did not verify that answer.

By Mr. POSTE:

Q. Do you know when the Gold heating system was put into those trains that were run exclusively in this State?

A. Well, I know it is within a year, within a year from
128 this time. At the date specified in the complaint I will not testify that they were heated by the Gold system.

Q. Don't you know, as matter of fact, that at the dates specified in the complaint the Baker heater was still retained in those trains?

A. Let me explain.

Q. Can't you answer the question? I mean the trains run exclusively within the State.

A. I want to explain what I mean by those trains. Those trains were run upon the branch road exclusively—the Harlem River branch that used the Gold heater. Prior to the adoption of the Gold heater upon those trains the Baker heater was used upon them.

By Mr. BOWERS:

Q. Don't all the trains on this road run within the State of Connecticut, except those that are operated on what *as* is called the Port Chester branch?

A. I was just looking at the time-table to find that out. I notice that an exception of three trains is made in the answer. I presume that exception is made of three which run only as far as Por Chester in this State upon the main line of the road.

DEFENDANT'S COUNSEL: I ask that the plaintiff be compelled to elect as to whether it seeks to get these penalties as to trains running wholly within this State or running within the State of Connecticut, because if they choose to make their election as to these three trains referred to, running from the Grand Central depot to Port Chester, within this State, I ask their complaint be dismissed on the ground that it is not a road fifty miles in length. The reasoning of the opinion of the general term, which we have been told has been adopted by the court of appeals, was that the legislature did not intend this statute to apply to short local trains, and that is the reason it excepted roads less than fifty miles in length, but that they intended it to apply to roads of great length, particularly
129 those operated with sleeping cars, and that they did not propose to let this defendant escape the liability by saying that the greater part of the road was outside of the State—that the intent of the act was to apply to trains running sleeping coaches. I think it is fair to get the proposition distinctly upon the record as to which class of penalties or which class of trains they are seeking these penalties for. I think the time has come when they ought to select either the one hundred and odd trains that are engaged in interstate commerce or the three trains that are not engaged in interstate commerce.

The COURT: Your purpose will be served by a stipulation that the local trains were on a line less than fifty miles in length.

PLAINTIFF'S COUNSEL: That appears by the evidence—that it is

less than fifty miles from the Grand Central depot to Port Chester—we concede that.

DEFENDANT'S COUNSEL: Yes, it is proved that it is less than fifty miles from here to Port Chester.

The COURT: Then that covers your point. I think they have a right to rely on both propositions.

Defendant excepts.

Case closed.

PLAINTIFF'S COUNSEL: We have nothing by way of rebuttal except that we desire to have the allegation in the answer.

DEFENDANT'S COUNSEL: The pleadings are part of the record at any time.

PLAINTIFF'S COUNSEL: I don't suppose it would be compe-
130 tent unless we offered it. It is the allegation in paragraph 3 of the answer: "That the defendant runs over 100 passenger trains daily in both directions, and only three of those trains do not go into the State of Connecticut, and most of them run between the State of New York and the State of Connecticut." That is the allegation in the answer which you desire to be recorded as parts of the proofs.

Now, we ask that the court direct a verdict for the plaintiff for the sum of $7,000, there being no dispute as to the amount.

DEFENDANT'S COUNSEL: We ask to go to the jury upon the issues in the case. I ask to go to the jury on the issues that the Baker heater, which has been proved in this case as the means by which the cars of the defendant were heated, is not a stove or furnace within the meaning of the statute which is claimed to have been violated.

Motion denied. Exception.

Before I proceed further, I desire to offer in evidence the "tripartite lease" which has been referred to by the defendant.

Paper marked "Ex. No. 4."

The following is a copy of the lease:

"This indenture, made the first day of November, in the year one thousand eight hundred and seventy-two, between the New York and Harlem Railroad Company, of the first part, the New York New Haven and Hartford Railroad Company, of the second part, and the New York Central and Hudson River Railroad Company, of the third part, witnesseth, as follows:

Whereas, the trains of the New York, New Haven and Hartford Railroad Company enter the city of New York upon the track of the New York and Harlem Railroad Company, and a connection has been made whereby the trains of the New York Central and
Hudson River Railroad Company also enter said city upon
131 the track of the New York and Harlem Railroad Company, and that company has, for the purpose of affording increased depot and yard accommodations for its own passenger trains and business, and also for the passenger trains and business of the said two other companies, thus coming upon its road acquired the lands and constructed the depot and yard for storing cars hereinafter mentioned.

And, whereas the New York and Harlem Railroad Company, for the more convenient transaction of business at said depot, and in consideration of the rents hereinafter reserved, has agreed with said two other companies respectively for and during the terms hereinafter granted to set apart certain portions of said depot for the passenger trains and business of said three companies respectively, and also to devote other portions of said depot and said yard for the storing of cars to the use in common of said three companies in their passenger business upon the terms and conditions and subject to the covenants hereinafter set forth.

Now this indenture further witnesseth that:

SECTION I. The New York and Harlem Railroad Company, in consideration of the rents hereinafter reserved to be paid by the New York, New Haven and Hartford Railroad Company, and in consideration of the covenants on the part of that company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease, unto the last-named company for and during the term of its charter and all renewals thereof, including the charter of any company which shall operate the present railroad of said company, party hereto, and of which the latter shall form a component part, for the accommodation of its passenger trains and business, the three tracks and grounds covered thereby in said depot, lying easterly of the centre or wide platform and designated on the diagram hereto annexed, marked A, by numbers eight (8), nine (9), and ten (10).

SECTION II. Also, the use in common with the New York and Harlem Railroad Company of the platform lying on the
132 westerly side of said three tracks for the accommodation of passengers and their baggage.

SECTION III. And, also the use for like purpose is in common with the New York and Harlem Railroad Company, and the New York Central and Hudson River Railroad Company, of the platform lying next on the easterly side of said three tracks and also the wide platform north of and adjoining the passenger and baggage rooms of said party of the second part, subject, however, to the regulations and directions as to the use of said tracks and platforms which may be, from time to time, made and given by the depot master herein mentioned.

SECTION IV. Also the right in common with the New York and Harlem and New York Central and Hudson River Railroad Companies to use the three most easterly tracks and the platforms adjoining the same in said depot (excepting that part of said tracks which is reserved for the exclusive use of the city care of the New York and Harlem Railroad Company), and which are designated on the diagram A, hereto annexed, by the numbers eleven (11), twelve (12) and thirteen (13), for the receipt and accommodations under the direction of said depot master of all its passenger trains arriving at said depot, and for the discharge of all its passengers, baggage, express and mail matter as hereinafter provided.

SECTION V. Also the right of ingress to and egress from said demised portions of said depot for all its passenger trains under the

direction of said depot master over the tracks northerly of said depot leading to the main tracks of the New York and Harlem Railroad Company in Fourth avenue and to the yard for the storage of cars.

SECTION VI. Also the right in common with the New York and Harlem, and the New York Central and Hudson River Railroad Companies, and under the direction of said depot master, to the use of the said yard for the storage of cars; which said yard is bounded and described as follows:

133 First. The block bounded northerly by Forty-sixth street, easterly by Fourth avenue, southerly by Forty-fifth street, and westerly by Madison avenue.

Second. The block bounded northerly by East Forty-seventh street easterly by Fourth avenue, southerly by East Forty-sixth street and westerly by Madison avenue.

Third. Commencing at the southeast corner of East Forty-eighth street and Madison avenue, running thence easterly along the southerly side of said East Forty-eighth street to the Fourth avenue; thence southerly along the westerly side of Fourth avenue two hundred (200) feet ten (10) inches to east Forty-seventh street; thence westerly along the northerly side of East Forty-seventh street, two hundred and fifty (250) feet; thence northerly and parallel with Fourth avenue one hundred (100) feet five (5) inches; thence westerly and parallel with East Forty-seventh street fifty (50) feet; thence southerly and parallel with Fourth avenue twenty-five (25) feet; thence westerly and parallel with East Forty-seventh street one hundred (100) feet to Madison avenue, and thence northerly along the easterly line of Madison avenue one hundred and twenty-five (125) feet five (5) inches to point or place of beginning.

Fourth. Beginning at the northwest corner of East Forty-eighth street and Fourth avenue; thence running along the westerly line of Fourth avenue one hundred (100) feet five (5) inches; thence westerly and parallel with East Forty-eighth street one hundred (100) feet; thence southerly and parallel with said Fourth avenue one hundred (100) feet five (5) inches to East Forth-eighth street, and thence easterly along the northerly line of East Forty-eighth street one hundred (100) feet to point or place of beginning.

All of which property is more particularly shown on diagram hereto annexed, marked D, and colored pink, and is not to be used by any or either of the parties hereto for any purpose other than the storage of cars used on passenger trains, and the cleansing and ventilating of such cars, their bedding, cushions and furniture, and doing such work as may be necessary to keep such cars in

134 proper condition for daily use, without the written consent of said three other companies.

SECTION VII. And also the right in common with said New York and Harlem, and New York Central and Hudson River Railroad Companies, and subject to the stipulations hereinafter contained, to the use of the baggage-room and cellar thereunder, on the easterly side of said depot, as a place for the deposit of baggage brought by its passenger trains arriving at said depot.

SECTION VIII. Also the rooms on the first, or ground, floor, of the southerly end of said depot, extending on Forty-second street from the west side of the archway to the new street (between Madison and Fourth avenues) on the westerly side of the depot, excepting the hallway designated on diagram hereto annexed and marked A, and numbered twelve (12), which is to be and remain for the use of said second party, as a means of communication with its offices, and also for the joint use of the parties hereto for the egress of passengers from all passenger trains arriving in said depot.

SECTION IX. Also the rooms in the second floor, extending on Forty-second street, from Fourth avenue to the easterly line of room designated on diagram B, hereto annexed, as number ten (10).

SECTION X. Also the rooms on the third floor, extending on Forty-second street from Fourth avenue to the easterly line of the tower (on the northeast corner of Forty-second street and the new street), and designated on diagram, hereto annexed, marked C, as number one (1), and also all rooms contained in the central tower on Forty-second street, and the tower at northeast corner of Forty-second street and Fourth avenue, and also the basements and vaults on Forty-second street, east of the east wall of the tower at the southwest corner of said depot. All said rooms and premises herein demised to be used for the reception and accommodation of the passengers and their baggage, package, newspaper, telegraph and the ticket and business offices of said New York, New Haven and Hartford Railroad Company, and for no other purposes.

135 SECTION XI. And this agreement further witnesseth that the New York and Harlem Railroad Company, in consideration of the rents hereinafter reserved to be paid by the New York Central and Hudson River Railroad Company, and in consideration of the covenants on the part of that company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease, unto the last-named company, for, and during the term of its charter and all renewals thereof, including the charter of any company which shall operate the present railroad of said company, party hereto, and of which the latter shall form a component part for the accommodation of its passenger trains and business, the four most westerly tracks of said depot and the grounds covered thereby (including the track into the baggage-room appropriated to said last-named company).

Also the westerly platform (excepting that portion of the same immediately in front of the waiting-rooms of the New York and Harlem Railroad Company and which is hereby reserved for the joint use of the New York and Harlem and the New York Central and Hudson River Railroad Companies), and also the platform lying between the two most easterly of said four tracks, for the accommodation of passengers and their baggage. Subject, however, to the regulations and directions as to the use of said tracks and platforms which may be from time to time made and given by the depot master hereinafter mentioned.

SECTION XII. Also the right in common with the New York and Harlem and the New York, New Haven and Hartford Railroad

Companies to use the wide platform north of and adjoining the passenger and baggage rooms of said party of the second part and also the three most easterly tracks in said depot, and the platforms adjoining the same (excepting that part of said tracks which is reserved for the exclusive use of the city cars of the New York and Harlem Railroad Company) and which are designated on the diagram A, hereto annexed, by the numbers eleven (11), twelve
136 (12) and thirteen (13), for the receipt and accommodation under the direction of said depot master of passenger trains arriving at said depot, and for the discharge of all their passengers and baggage, express and mail matters.

SECTION XIII. Also the right of ingress to and egress from said demised portions of said depot for all its passenger trains, under the direction of the said depot master, over the tracks northerly of said depot leading to the main tracks of the New York and Harlem Railroad Company, in Fourth avenue, and to the yard for the storage of cars.

SECTION XIV. Also the right to the use in common with the New York and Harlem and the New York, New Haven and Hartford Railroad Companies, and under the direction of said depot master of the said yard for the storage of cars, which said yard is not to be used by either of the parties hereto for any purpose other than the storage of cars used on passenger trains, and the cleansing and ventilating of such cars, their bedding, cushions and furniture, and doing such work as may be necessary to keep such cars in proper condition for daily use, and also the right in common with the two last-named companies and subject to the stipulations hereinafter contained to the use of the baggage-room and cellar thereunder, on the easterly side of said depot, as a place for the deposit of baggage brought by passenger trains arriving at said depot.

SECTION XV. Also the rooms on the ground floor on the westerly side of said depot on the diagram hereto annexed, marked A, extending from Forty-fifth street southerly to a line marked 'division line between New York and Harlem and New York Central and Hudson River Railroad Companies,' together with the cellar under the baggage-room. Also the rooms on the second floor on the westerly side of said depot on diagram hereto annexed, marked B, extending from Forty-fifth street southerly to a line marked 'division line between New York and Harlem and New York Central and Hudson River Railroad Companies,' also the rooms on the third and intermediate story, and all rooms above on the
137 westerly side of said depot, on diagram hereto annexed marked C, extending from Forty-fifth street southerly to a line marked 'division line between New York and Harlem and New York Central and Hudson River Railroad Companies,' all of said rooms and premises herein demised to be used for the reception and accommodation of the passengers and their baggage, and the ticket, package, newspaper, telegraph and business offices of said New York Central and Hudson River Railroad Company and for no other purpose.

SECTION XVI. The New York and Harlem Railroad Company

reserves for itself all the tracks, platform rooms and other parts of said depot and yard for the storage of cars and the accommodation therein not hereby demised. All the aforesaid premises so reserved by the said New York and Harlem Railroad Company are to be used for its passenger trains and business coming over the New York and Harlem railroad or any part thereof, including the city lines, and it covenants with the other parties hereto respectively not to apply the portions or accommodations so reserved, or to permit them to be applied to any other but similar purposes to those to which the two companies lessees are hereby permitted to apply the corresponding portions of said depot and accommodations demised to them respectively, without the written consent of the said two other companies, and it is further agreed that in case the said New York and Harlem Railroad Company shall use any portions of the platforms, tracks and depot, in addition to the portions herein exclusively devoted to the use of the city cars, for the purposes of such city cars, then, and in that case, the New York and Harlem Railroad Company shall use such portions for the accommodation of the city cars in such manner as not to obstruct the other two companies, parties hereto, in the enjoyment of the portions of the premises hereby secured to them.

SECTION XVII. And whereas it is essential for the purpose of avoiding confusion in the handling of trains and cars at said depot and yard, and in the transaction of the business there to be
138 done, that the said depot and yard for the storage of cars should be under the charge of a responsible person, whose duty it shall be to regulate the entrance and exit of trains and the storage of cars, to preserve order and regularity in the management of said depot and to see that each of the three companies entitled to use the same receives the accommodations to which it is entitled without favor or partiality.

It is mutually agreed by and between the three companies, parties to these presents, that the said depot yard, and the management of trains on the approaches thereto from the junction of the Spuyten Duyvil and Port Morris railroad with the New York and Harlem railroad, including the electric signals, telegraph and other apparatus for regulating such trains, shall at all times during the terms hereby granted be under the sole charge and direction, as hereinafter specified, of a depot master.

It shall be the duty of said depot master to regulate the entrance of all trains into said depot, and their exit therefrom, so as to avoid collision, interference and unnecessary detention of the trains of either of said companies, to direct all switchings and to furnish and have charge of all switches and necessary switching power; to make up all outgoing trains; to direct the removal of trains from said depot after they have discharged their passengers; to locate them in the said yard for the storage of cars in such manner as he shall deem most convenient for all the parties hereto; to preserve order in said depot and said yard and the approaches thereto, and to give all directions which may be necessary to facilitate the transaction of the business there to be done; to direct as to the lighting, heating and

cleaning of the car-room in said depot and of the said yard for the storage of cars, and, generally, to have the charge, management and regulation of the exterior and interior of said depot and said yard and the approaches thereto, excepting the baggage-rooms and the rooms exclusively occupied or held by said companies, respectively, in said depot building; to employ such other persons or
139 force under him as may be necessary or proper to the due discharge of the duties hereby devolved upon him; but it is expressly agreed that under no circumstances shall said depot master allow any steam or locomotive engine to be admitted into said depot.

SECTION XVIII. And it is severally covenanted and agreed that the servants and employees of each of said three companies will at all times promptly obey all lawful orders of the said depot master and conform to all regulations lawfully made by him in regard to the matters committed to his charge.

SECTION XIX. It is further covenanted and agreed, in manner aforesaid, for the purpose of avoiding the detention of any of the trains of either of the said three companies arriving at or approaching said depot, that, if at the time of the arrival of any such train the three tracks hereinbefore devoted to the accommodation of incoming trains should be occupied or obstructed so as not immediately to admit the train so arriving, such depot master may in his discretion direct such train to enter upon any other track in said depot which shall be at the time unoccupied, and there to discharge its passengers and their baggage.

SECTION XX. It is further mutually covenanted and agreed that as soon as any train of either of said three companies arriving at said depot shall have discharged its passengers and their baggage, such train shall forthwith be removed from said depot under the direction of said depot master and placed in such part of the yard for the storage of cars, or upon such track or tracks in said depot as are hereby devoted to the use of the company to which such trains belong, as he shall direct.

It is mutually agreed by and between the parties to these presents, that in respect to those parts of said depot, which are by the provisions of this indenture appropriated to the use of said parties in common that, they shall be managed and used as far as practicable in such manner that each of said parties may be accommodated therein to the full extent of the requirements of the business
140 which such party is entitled to carry on in said depot, and that whenever required by it for use each party shall be entitled, under the direction of the depot master, to at least a proportion of such accommodations corresponding with the proportion of taxes and general depot expenses which such party has herein agreed to bear, but each of said three companies is to be entitled to one-third of the accommodations in said yard for the storage of cars.

SECTION XXI. And the New York, New Haven and Hartford Railroad Company covenants and agrees with the New York and Harlem Railroad Company that all express and mail matter to be

reserves for itself all the tracks, platform rooms and other parts of said depot and yard for the storage of cars and the accommodation therein not hereby demised. All the aforesaid premises so reserved by the said New York and Harlem Railroad Company are to be used for its passenger trains and business coming over the New York and Harlem railroad or any part thereof, including the city lines, and it covenants with the other parties hereto respectively not to apply the portions or accommodations so reserved, or to permit them to be applied to any other but similar purposes to those to which the two companies lessees are hereby permitted to apply the corresponding portions of said depot and accommodations demised to them respectively, without the written consent of the said two other companies, and it is further agreed that in case the said New York and Harlem Railroad Company shall use any portions of the platforms, tracks and depot, in addition to the portions herein exclusively devoted to the use of the city cars, for the purposes of such city cars, then, and in that case, the New York and Harlem Railroad Company shall use such portions for the accommodation of the city cars in such manner as not to obstruct the other two companies, parties hereto, in the enjoyment of the portions of the premises hereby secured to them.

SECTION XVII. And whereas it is essential for the purpose of avoiding confusion in the handling of trains and cars at said depot and yard, and in the transaction of the business there to be
138 done, that the said depot and yard for the storage of cars should be under the charge of a responsible person, whose duty it shall be to regulate the entrance and exit of trains and the storage of cars, to preserve order and regularity in the management of said depot and to see that each of the three companies entitled to use the same receives the accommodations to which it is entitled without favor or partiality.

It is mutually agreed by and between the three companies, parties to these presents, that the said depot yard, and the management of trains on the approaches thereto from the junction of the Spuyten Duyvil and Port Morris railroad with the New York and Harlem railroad, including the electric signals, telegraph and other apparatus for regulating such trains, shall at all times during the terms hereby granted be under the sole charge and direction, as hereinafter specified, of a depot master.

It shall be the duty of said depot master to regulate the entrance of all trains into said depot, and their exit therefrom, so as to avoid collision, interference and unnecessary detention of the trains of either of said companies, to direct all switchings and to furnish and have charge of all switches and necessary switching power; to make up all outgoing trains; to direct the removal of trains from said depot after they have discharged their passengers; to locate them in the said yard for the storage of cars in such manner as he shall deem most convenient for all the parties hereto; to preserve order in said depot and said yard and the approaches thereto, and to give all directions which may be necessary to facilitate the transaction of the business there to be done; to direct as to the lighting, heating and

cleaning of the car-room in said depot and of the said yard for the storage of cars, and, generally, to have the charge, management and regulation of the exterior and interior of said depot and said yard and the approaches thereto, excepting the baggage-rooms and the rooms exclusively occupied or held by said companies, respectively, in said depot building; to employ such other persons or
139 force under him as may be necessary or proper to the due discharge of the duties hereby devolved upon him; but it is expressly agreed that under no circumstances shall said depot master allow any steam or locomotive engine to be admitted into said depot.

SECTION XVIII. And it is severally covenanted and agreed that the servants and employees of each of said three companies will at all times promptly obey all lawful orders of the said depot master and conform to all regulations lawfully made by him in regard to the matters committed to his charge.

SECTION XIX. It is further covenanted and agreed, in manner aforesaid, for the purpose of avoiding the detention of any of the trains of either of the said three companies arriving at or approaching said depot, that, if at the time of the arrival of any such train the three tracks hereinbefore devoted to the accommodation of incoming trains should be occupied or obstructed so as not immediately to admit the train so arriving, such depot master may in his discretion direct such train to enter upon any other track in said depot which shall be at the time unoccupied, and there to discharge its passengers and their baggage.

SECTION XX. It is further mutually covenanted and agreed that as soon as any train of either of said three companies arriving at said depot shall have discharged its passengers and their baggage, such train shall forthwith be removed from said depot under the direction of said depot master and placed in such part of the yard for the storage of cars, or upon such track or tracks in said depot as are hereby devoted to the use of the company to which such trains belong, as he shall direct.

It is mutually agreed by and between the parties to these presents, that in respect to those parts of said depot, which are by the provisions of this indenture appropriated to the use of said parties in common that, they shall be managed and used as far as practicable in such manner that each of said parties may be accommodated therein to the full extent of the requirements of the business
140 which such party is entitled to carry on in said depot, and that whenever required by it for use each party shall be entitled, under the direction of the depot master, to at least a proportion of such accommodations corresponding with the proportion of taxes and general depot expenses which such party has herein agreed to bear, but each of said three companies is to be entitled to one-third of the accommodations in said yard for the storage of cars.

SECTION XXI. And the New York, New Haven and Hartford Railroad Company covenants and agrees with the New York and Harlem Railroad Company that all express and mail matter to be

laden on the outgoing passenger trains of the New York, New Haven and Hartford Railroad Company, unless laden outside the depot, shall be brought into said depot through the entrances fronting on Fourth avenue, northerly of the baggage-room, and that the outgoing express and mail cars may be brought upon the most easterly track of said depot so to be laden, and for that purpose said party of the second part shall have the precedence in the use of said easterly track over the incoming trains of the three companies, and that all outgoing baggage for such trains shall be brought into said depot through the baggage-room leased to the last-named company and laden upon the tracks leased to it, the provisions of this section to be subject however to variation by said depot master as convenience may require.

SECTION XXII. It is mutually agreed between the parties hereto that no express matter shall be discharged on any of the platforms in said depot, except light express matter, arriving in the regular baggage cars attached to the passenger trains, and that the depot master shall have power to determine what express matter shall be so discharged and the time, place and manner of discharging the same, and also the mails arriving by said trains, so as not to obstruct or cause delay to the trains or passengers of either of the companies or to interfere with the delivery of baggage.

SECTION XXIII. And the New York Central and Hudson River Railroad Company covenants and agrees with the New York
141 and Harlem Railroad Company that all express and mail matter, and all baggage to be laden on the outgoing passenger trains of the New York Central and Hudson River Railroad Company, unless laden outside of the depot shall be brought into said depot through the entrances fronting on the new street, on the westerly side of said depot on the premises demised to the last-named company and laden on the tracks demised to that company.

SECTION XXIV. And it is agreed that all express and mail matter to be laden on the outgoing passenger trains of the New York and Harlem Railroad Company, unless laden outside of the depot, shall be brought into said depot through the entrances fronting on Fourth avenue, northerly of the baggage-room, and that the outgoing express and mail cars may be brought upon the most easterly track of said depot so to be laden, and for that purpose said party of the first part shall have the precedence in the use of said easterly track over the incoming trains of the three companies, and that all the outgoing baggage for such trains of said company shall be brought into said depot through the baggage-rooms reserved by it and laden upon the tracks reserved by it, the provisions of this section to be subject, however, to variation by said depot master as convenience may require.

SECTION XXV. And the parties hereto severally covenant and agree that they will not, excepting upon emergency and with the consent and under the direction of the depot master, cause or allow any express or mail wagons, carts, or other wagons, carriages or vehicles of similar character to be brought into said depot, and that

they shall under no circumstances use the said depot for the transaction of freight business, or lade or unlade any freight therein, other than the baggage of passengers, the mails and such express matter as is hereinbefore specified, and that all baggage shall be unloaded from the cars of the respective companies, under the direction of the depot master, expeditiously, and without delay, and in such manner as not to obstruct the tracks.

142 SECTION XXVI. And it is further covenanted and agreed in manner aforesaid that the baggage-room and cellar thereunder on the easterly side of said depot shall be placed under the exclusive charge and control of a baggage master, to be appointed in the same manner as said depot master and subject to removal in the same way, who shall give such security as the parties hereto shall require, and who shall represent each of said companies in respect to the care of baggage arriving by its trains, and shall undertake to be personally responsible and to hold each of said companies harmless against all claims from loss of or damage to baggage after its arrival at said depot and until it shall have the same, and that no person shall be admitted to said baggage-room except by direction or consent of said baggage master or his agents, and that neither of the parties hereto is to be charged with the care of said baggage-room or its contents or to be responsible in case any person improperly obtains admittance thereto, and that each of said companies shall have the right to fix its own rates for the storage of baggage coming into said baggage-room from its own trains, and said baggage master shall collect and pay over to the treasurer of the New York and Harlem Railroad Company all monies accruing on account of such storage, to be by said treasurer credited to the joint account of the three companies.

SECTION XXVII. It is mutually agreed that the depot master, hereinbefore mentioned, shall be appointed annually by the unanimous consent, in writing, of the presidents or vice-presidents of the said three companies, and shall be removable at any time by the written order of the president or vice-president of either of said companies, and in case of such removal or of a vacancy in the office of depot master, arising by death, disability, resignation or otherwise, another shall forthwith be appointed by the mutual consent of the presidents or vice-presidents of the three companies, for the term of one year, subject to removal in the manner hereinbefore prescribed. And in case the said parties shall be unable to agree, then, and in that case, such depot master shall be appointed

143 by the governor of the State of New York, and such appointee shall hold office until his successor shall be agreed upon by the three companies in the manner before mentioned, subject, however, to the right of either of said parties to remove such appointee in the same manner as if he had been appointed by said companies, provided, however, that no removal of any depot master by either of the parties hereto, under this section, shall take effect until the time specified in a written notice of such removal, to be given to each of the other parties hereto, and which time shall be not less

than ten days nor more than fifteen days from the service of such notice.

SECTION XXVIII. It is further mutually agreed between the several parties hereto, that all necessary and proper repairs upon the exterior or interior of any part of said depot and upon the yard for the storage of cars, and the structures thereon erected or to be erected, and the tracks south of Fifty-second street and north of Forty-second street, leading to the said depot and yard for the storage of cars (except the two main tracks on the Fourth avenue), and upon the electric signal, telegraph and other apparatus for regulating trains below the Harlem river, and upon all buildings and sheds now erected or in process of erection in said yard for the storage of cars, and upon all other structures which may hereafter be erected thereon by and with the written consent of said three companies, excepting, however, the interior of the rooms and offices occupied exclusively by said companies respectively, and also all expenditures for men, materials, supplies and equipments necessary to be made for the benefit of the parties hereto in conducting the business in the said depot and yard for the storage of cars, shall be made by and under the direction of the said depot master, and that the expense thereof shall be borne by the several parties hereto in the proportions hereinafter mentioned, and that statements of the work so done and the cost thereof and the expenditures so incurred shall be furnished by said depot master to the treasurer of each of said companies monthly.

144 SECTION XXIX. The New York, New Haven and Hartfort Railroad Company, in consideration of the premises covenants and agrees with the New York and Harlem Railroad Company, to pay to it for the premises and privileges hereby demised to the New York, New Haven and Hartford Railroad Company, a yearly rent of one hundred and forty-eight thousand two hundred and eighty-one & $\frac{63}{100}$ dollars, payable in equal quarter-yearly payments on the first days of February, May, August and November, in each year during the term of this lease, which sum is the interest on thirty-three per cent. of the sum of six millions four hundred nineteen thousand one hundred eighteen & $\frac{10}{100}$ dollars, which is the aggregate cost of the premises and property demised hereby.

SECTION XXX. The New York Central and Hudson River Railroad Company, in consideration of the premises, covenants and agrees with the New York and Harlem Railroad Company, to pay to it for the premises and privileges hereby demised to the said New York Central and Hudson River Railroad Company, a yearly rent of one hundred eighty-eight thousand seven hundred twenty-two & $\frac{67}{100}$ dollars, payable in equal quarter-yearly payments on the first days of February, May, August and November in each year during said term, which said sum is the interest on forty-two per cent. of the sum of six millions four hundred nineteen thousand one hundred eighteen & $\frac{10}{100}$ dollars, being the aggregate cost of the said premises and property hereby demised.

SECTION XXXI. And it — further mutually agreed by and be-

tween the three companies, parties to these presents, that the following payments and expenses in addition to said rent, connected with said depot and yard for the storage of cars, shall during the term of this lease be borne and paid by the said three companies, in the proportion of twenty-five (25) per cent. by the New York and Harlem Railroad Company; thirty-three (33) per cent. by the New York, New Haven and Hartford Railroad Company, and
145 forty-two (42) per cent. by the New York Central and Hudson River Railroad Company, viz:

First. All taxes and assessments, ordinary and extraordinary, which may at any time during the term hereby granted be assessed or imposed upon said depot and yard for the storage of cars, or the land on which they are situated, or the buildings or improvements thereon or any part of either, under the authority of any law of the State of New York or of the United States of America, now existing or which may hereafter be enacted, including all Croton water rents, or sums which may be payable for the use of Croton water in said depot and yard for the storage of cars, provided, however, that no outlays or expenses incurred, or to be incurred, by the New York and Harlem Railroad Company in perfecting or securing its title to any part of the premises hereby leased, shall be borne by said New York, New Haven and Hartford Railroad Company.

Second. Interest at the rate of seven per cent. per annum upon all permanent improvements which may be hereafter made or erected by the party of the first part in and upon said yard for the storage of cars, or any part thereof, or upon said car-house or depot for the benefit and with the written consent of the three companies using the same.

And it is further mutually agreed, by and between the three companies parties to these presents, that the following payments and expenses connected with said depot and yard for the storage of cars shall, during the term of this lease, be borne and paid by the said three companies equally, viz:

1st. The cost of all necessary and proper repairs, made by and under the direction of the depot master, between Forty-second and Fifty-second streets as herein provided.

2d. The cost and expense of repairing or rebuilding any part of the depot, or any of the structures hereinbefore mentioned, which may be injured or destroyed by act of God, fire, civil commotion, violence or casualty.

3d. The compensation agreed by the parties hereto to be
146 paid to the depot master and his employees, and to the baggage master and his employees, and also all expenditures incurred by them in the discharge of their duties, between Forty-second and Fifty-second streets as is herein provided.

4th. The expense of lighting, heating and cleansing the large car-room in said depot and the passages leading thereto and the said yard for the storage of cars, and the buildings which may be erected thereon, and also of heating by steam the offices, baggage-rooms and other rooms occupied by said three companies respectively.

SECTION XXXII. It is hereby mutually agreed that each of said three companies will keep in repair the rooms and offices occupied exclusively by it. And, further, that in case any damage shall be done to any part of said depot and yard for the storage of cars, or the structures thereon or the approaches thereto, through the negligence of either of the companies, its servants or agents, such company shall bear the whole expense of repairing such damages.

SECTION XXXIII. And each of the said two companies lessees hereby covenants to and with the New York and Harlem Railroad Company, that such company lessee will, on demand, in addition to said rents, pay its proportion, hereinbefore declared, of the taxes, assessments and Croton water rents and dues, hereinbefore mentioned, unto the New York and Harlem Railroad Company, as soon as the same or any part thereof shall be paid to the proper authorities, and that it will not contest or dispute the regularity or validity of any such tax or assessment which the New York and Harlem Railroad Company shall pay. Provided that before making any such payment said New York and Harlem Railroad Company shall give to said other two companies reasonable notice of such tax or assessment before paying the same, and shall, upon the written request of either of said two other companies, contest the regularity and validity of any such tax or assessment at the joint expense of the three parties hereto in the proportion aforesaid.

147 But such taxes and assessments so required to be contested may be paid by the New York and Harlem Railroad Company under duress and protest, if it shall deem that course necessary, and it shall be entitled to reimbursement from the other companies of their respective portions thereof, as hereinbefore provided.

But the New York and Harlem Railroad Company shall, on the written request of either of said two other companies, take legal proceedings to recover back the amounts so paid and all expenses incurred by it to which it may be subjected in consequence of such proceedings, shall be borne by the three parties hereto, in the proportions aforesaid, and all moneys refunded or recovered back shall belong to said parties respectively in the proportions aforesaid.

And each of the said companies lessees hereby covenants with the New York and Harlem Railroad Company, its successors and assigns, not to assign this lease or any interest therein, or in any part of the premises or privileges hereby demised, or to underlet the same or any part thereof, without the previous written consent of the New York and Harlem Railroad Company, and also not to use or occupy any part of the demised premises or privileges or permit the same to be used or occupied for any purposes other than those for which the same are hereby stated to be demised, and the New York and Harlem Railroad Company, during the continuance of this lease, covenants with the two other companies aforesaid that the portions of said depot and yard for the storage of cars and accommodations reserved by it shall not be used during the term hereby granted for any other purposes than those for which they are hereinbefore stated to be reserved.

SECTION XXXIV. It is hereby further mutually covenanted and agreed by said New York and Harlem Railroad Company that in the use by it of the portions of said depot and yard for the storage of cars, not hereby demised, said company shall be and remain
148 subject to the regulations and directions of said depot master and said baggage master, in the same manner and to the same extent in all respects as said other two companies are by the terms of this indenture, as hereinbefore stated.

SECTION XXXV. Provided, always, and these presents are upon the express condition, that if either of the said companies lessees shall at any time during the term of this lease make default and continue therein for a period of thirty days after demand thereof in writing in the payment of the yearly rent hereinbefore reserved to be paid by it, or any part thereof when due, then, and in every such case and although no advantage may have been taken of previous defaults these presents and the term hereby granted shall as to such defaulting company, cease and become void at the option of the New York and Harlem Railroad Company, its successors or assigns, and it shall be lawful for it or them into and upon the premises hereby demised to such defaulting company, or into any part thereof or in the name of the whole to re-enter, and the same to have again, repossess and enjoy as in their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and each of the said companies lessees hereby further covenants to and with the New York and Harlem Railroad Company, its successors and assigns, that on the expiration or sooner termination of the term hereby granted such company will quietly leave, surrender and yield up the premises and privileges hereby demised to it, with the appurtenances, unto the New York and Harlem Railroad Company, its successors and assigns, and that the portions of said premises appropriated to either of said two companies exclusively shall be delivered up in as good plight and condition as reasonable use and wear will permit.

SECTION XXXVI. It is further mutually agreed between the parties hereto that in case either of the parties of the second and third part- hereto shall be deprived of the use of the said depot and prevented from using it for the purposes herein mentioned, by
149 legislative or municipal interference, and against its will, or by being prevented from running their trains by steam to Forty-ninth street, or by any failure of the title of said party of the first part to the premises hereby leased, then and in that case this lease shall, at the option of such party of the second or third part, cease and be determined; provided that such option be exercised and notice thereof given to the other parties hereto within sixty days after such party shall have been deprived of the use of such depot, or shall have been in manner aforesaid prevented from running their trains by steam, in which case the interest of said party so exercising said option shall cease and determine at the time in said notice specified, which shall not be less than one year from the time of giving such notice, unless within that time the obstruction

to such use shall have been removed, in which case said notice of option shall be deemed to have been withdrawn.

SECTION XXXVII. It is further mutually agreed between the several parties hereto, and they respectively covenant each with the others that no part of said depot building shall be used or permitted to be used for the sale of tickets for opposition, rival or competing lines with either of the parties hereto, and that neither of said parties hereto will sell or permit to be sold in its offices tickets for such rival or competing lines, and that no hand-bills, placards or advertisements of such rival or competing lines shall be posted in any part of the depot, or of the offices or rooms reserved for the exclusive use of either of the parties hereto, and that no runners or persons employed in the sale of tickets or in procuring contracts for freight, passengers or baggage for such rival or competing lines shall be allowed in or upon any part of said depot or there permitted to ply such vocation.

SECTION XXXVIII. And the said party of the first part covenants and agrees with the parties of the second and third parts hereto respectively, that the said several parties of the second and third parts, paying the rent and sums of money hereinbefore reserved, and performing the covenants and agreements aforesaid on their parts respectively to be performed, shall and may at all times during the term hereby granted peaceably have, hold and enjoy the premises herein demised to them respectively without any manner of trouble of hindrance of or from the party of the first part or any other person or persons claiming under them.

SECTION XXXIX. In case of a total destruction of the depot building by act of God, fire, civil commotion, violence or casualty, the said building shall be rebuilt with all possible dispatch and at the joint expense of the several parties hereto, which they shall bear in the proportions in which the taxes and assessments on said property are heretofore agreed to be borne.

SECTION XL. It is agreed that either of the companies, parties hereto, may assign and transfer its rights and interests under this lease to either of the other companies, parties hereto. And that in case either of the parties hereto shall become consolidated, or united with, or merge in either of the other companies, parties hereto, or shall become consolidated or united with or merge in any other company which shall operate the present railroad of such company, party hereto, the transfer by the latter of its interests under this lease to such other company, shall not be deemed a transfer or alienation contrary to the provisions of this lease. Provided, however, that if such company to which it may be proposed to make such transfer be a rival, opposition or competing line to or with either of the companies, parties hereto, such transfer shall not be made without the consent of such latter company, and also further provided, that no transfer made by virtue of this section shall authorize or entitle the transferee or assignee to use the said depot, premises, privileges or accommodations hereby demised, or any part thereof for any purposes other than those to which the same are by the terms hereof restricted.

SECTION XLI. It is further agreed that the provisions which regulate the percentage or proportion of the aggregate cost of the said premises and property leased, the interest on which is the rent which the parties are to pay for the portions of the premises
151 and property hereby allotted to or demised to them respectively, and the provisions which regulate the percentage or proportion in which the respective parties agree to bear, and pay the annual charges and repairs and other expenditures mentioned in sections twenty-nine, thirty and thirty-one of this agreement, shall at the expiration of five years from the day when this lease shall take effect be revised and readjusted on the application of either of the parties hereto. Provided, that such party so desiring such revision shall give notice in writing to each of the other parties hereto, six months before the expiration of said five years, and in such case unless the parties hereto shall by agreement adjust the said percentages or proportions, such reversion shall be made by three persons as herein provided, who shall after hearing the several parties and such testimony as they shall offer, make and deliver in triplicate to each of the said parties a report in writing signed by them stating the conclusions reached by them and their reasons, and the report of said persons shall be binding upon the several parties hereto until the expiration of the second period of five years, and in respect thereto this instrument shall be construed and take effect as if its provisions had been modified in conformity with said report, and at the expiration of each successive period of five years the said percentages shall be subject to revision and modification in the manner above mentioned.

If the parties shall fail to agree upon the three persons, to make such revision, they shall be appointed by the chief justice of the court of appeals of the State of New York, in writing, upon the application of the party desiring such revision, and upon a previous notice in writing, to each of the other parties of thirty days, specifying the time and place, when and where such application is to be made. It is expressly understood that this section does not authorize any readjustment of the aggregate cost of the premises and property leased, nor of the particular portions of the depot and yard for the storage of cars allotted to and occupied by each party.

152 SECTION XLII. So long as the two main tracks, in Fourth avenue, lying outside and easterly of the easterly wall of said depot shall remain, and the New York, New Haven and Hartford Railroad Company shall be allowed to use the same in the manner provided in an agreement of March seventeenth, one thousand eight hundred and forty-eight, between the New York and Harlem Railroad Company, and the New York and New Haven Railroad Company, the New York, New Haven and Hartford Railroad Company shall not have or claim any rights in said depot or on any of the tracks running into or through the same, except such as may be conferred by this lease, but shall use said two outside tracks under said agreement of March seventeenth, one thousand eight hundred and forty-eight, and in case said outside tracks shall

be removed, or the use thereof shall be prohibited by the public authorities, the two tracks now running through the said depot shall be the main tracks of the New York and Harlem Railroad Company, and subject to use by the parties to said agreement as such, and the said parties shall be allowed to pass over the said two tracks and through the said depot, but not to stop or receive or discharge passengers, freight, or other articles therein, or to make any use thereof other than to use said two tracks for the transit of its cars to and from points below Forty-second street, except as provided in and in pursuance of and under this lease.

SECTION XLIII. The depot master is hereby authorized and empowered, within six months from the date of this agreement, in case he shall find it necessary to properly accommodate the baggage, mail and light express matter, carried in baggage cars, as provided by this agreement, for the outgoing trains of said second party, to cut off the easterly end of the wide platform on diagram A, numbered fifteen (15), and to put in an additional track as shown by the dotted lines, numbered sixteen (16), and to permit the baggage cars of outgoing trains of the said second party to be brought upon said track for the purpose of being loaded; also to cut
153 a window opening through the division wall at the point marked seventeen (17) and a doorway at point marked eighteen (18) on said diagram, in order to enable passengers of said second party to pass through and check their baggage.

In witness whereof the parties hereto have hereunto caused their respective corporate seals to be affixed and these presents to be subscribed by the vice-president of the parties of the first and third parts and the president of the party of the second part.

THE NEW YORK AND HARLEM RAILROAD CO.,
By W. H. VANDERBILT, *V. Prest.* [SEAL.]

Attest: ROB'T J. NIVEN, *Secretary.*

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.,
By WM. D. BISHOP, *President.* [SEAL.]
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD CO.,
By W. H. VANDERBILT, *V. Prest.* [SEAL.]

Attest: E. D. WORCESTER,
Secretary N. Y. C. & H. R. R. R. Co.

Sealed and delivered in presence of—
W. I. VANARSDALE."

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this seventeenth day of November, in the year 1872, before me personally came Robert J. Niven, secretary of the New York and Harlem Railroad Company, to me personally known, who be-

ing by me duly sworn, said that he resided in the city of
154 New York; that he was the secretary of the New York and Harlem Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as secretary of the said company.

And the said Robert J. Niven further said that he was acquainted with William H. Vanderbilt, and knew him to be the vice-president of said company; that the signature of the said William H. Vanderbilt subscribed to the said instrument was in the genuine handwriting of the said William H. Vanderbilt, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said Robert J. Niven.

At same time before me personally came William D. Bishop, the president of the New York, New Haven and Hartford Railroad Company, with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of Bridgeport and State of Connecticut; that he was the president of the New York, New Haven and Hartford Railroad Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of said company.

W. I. VANARSDALE,
Notary Public, N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 11th day of December, in the year 1872, before me personally came Edwin D. Worcester, secretary of the New York Central and Hudson River Railroad Company, with whom I am
155 personally acquainted, who being by me duly sworn, said that he resided in the city of Albany; that he was the secretary of the New York Central and Hudson River Railroad Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of the said company; and that he signed his name thereto by the like order as secretary of the said company.

And the said Edwin D. Worcester further said that he was acquainted with William H. Vanderbilt, and knew him to be the vice-president of said company; that the signature of the said William H. Vanderbilt, subscribed to the said instrument, was in the genuine handwriting of the said William H. Vanderbilt, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said Edwin D. Worcester.

W. I. VANARSDALE,
[SEAL.] *Notary Public, N. Y. Co.*

We ask your honor to direct judgment in favor of the defendant on the ground that the plaintiff has failed to make out a case.

2d. That chapter 616 of the Laws of 1887 and the various acts amendatory thereof are unconstitutional and void.

3d. That chapter 616 of the Laws of 1887 and the various acts amendatory thereof are unconstitutional and void under the Constitution of the United States, to wit: under section 8 of article 1 thereof in that they interfere with interstate commerce.

4th. That the said acts are unconstitutional and void under the fourteenth amendment to the Constitution of the United States in that they deny to the N. Y., N. H. & H. R. R. Co., a person within the jurisdiction of the State of New York, the equal protec-
156 tion of the laws, and in that they deprive said corporation of property without due process of law.

5th. That said acts do not apply to a railroad whose line of road in this State is less than fifty miles in length, and the line of road of the N. Y., N. H. & H. R. R. Co. in this State is less than fifty miles in length.

6th. That the evidence showing that the defendant was, at the date of the offense charged in the complaint, engaged in interstate commerce; that they are entitled to a direction in their favor.

7th. That as to the cars claimed to have been heated in violation of the statute in such trains as were run for the transportation of passengers between the States of New York and Connecticut, or the States of New York, Connecticut and Massachusetts no recovery can be had.

8th. That as to such trains, if any, as were run entirely within the limits of this State no recovery can be had, as the mileage of the road within this State is less than fifty miles.

Motion denied. Exception taken as to the denial of each ground of the motion.

The COURT: In this case I will direct a verdict for the plaintiff.

By direction of the court the jury found a verdict for the plaintiff for the sum of $7,000.

DEFENDANT'S COUNSEL: I except to the direction of the verdict and ask for thirty days to make case with thirty days' stay.

Motion granted.

Plaintiff's counsel asks for extra allowance.

Allowance of five per cent. granted.

The court then adjourned.

157 Supreme Court of New York in and for the County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff and Respondent, *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant and Appellant. } Notice of Appeal.

Take notice that the above-named defendant The New York, New Haven and Hartford Railroad Company does hereby appeal to the general term of the supreme court of the first department from the judgment of the said supreme court in this action, entered in the office of the clerk of said court, being the clerk of the city and county of New York, on the seventeenth day of October, 1891, and from each and every part of said judgment, and the appellant intends to bring up for review upon such appeal the interlocutory judgment herein, dated the 5th day of June, 1889, and on the same day entered in the office of the clerk of the city and county of New York.

Dated October 30th, 1891.

Yours, &c.,

PAGE & TAFT,
Attorneys for Defendant and Appellant.

To Hon. Charles F. Tabor, attorney general, attorney for plaintiff and respondent; and Leonard A. Giegerich, Esq., clerk.

158 Supreme Court, General Term, First Department.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The annexed case, containing exceptions, contains all the evidence given upon the trial, and the same having been settled by consent is hereby signed by me and ordered to be filed and annexed to the judgment-roll.

GEO. C. BARRETT,
Justice of the Supreme Court.

It is hereby consented that the annexed case containing exceptions be settled, signed and filed as the case containing exceptions upon which the appeal herein is to be heard.

Dated N. Y., December 23d, 1891.

CHARLES F. TABOR,
Attorney General, Plaintiff's Attorney.
PAGE & TAFT,
Defendant's Attorneys.

159 Supreme Court, General Term, First Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellant.

It is hereby stipulated and agreed that the within printed case contains all the evidence given upon the trial, and is a true copy of the case containing exceptions, the judgment-roll filed June 5th, 1889, the judgment-roll upon the judgment of the general term filed February 19th, 1890, and the order and judgment entered herein October 28th, 1890; the judgment-roll filed herein October 17th, 1891, and the notice of appeal from said judgment of October 17th, 1891.

Certification of the within papers on appeal as required by section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, February 19th, 1892.

S. W. ROSENDALE,
Attorney General and Attorney for Plaintiffs and Respondents.
PAGE & TAFT,
Attorneys for Defendant and Appellant.

160 At a general term of the supreme court of the State of New York, held at the county court-house, in the city of New York, in and for the first department, on the 4th day of April, 1892.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. Morgan J. O'Brien, Hon. Charles P. Andrews, associate justices.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellants.

The appeal from the judgment entered in the above-entitled action in favor of the plaintiffs, respondents, against the defendant, appellant, having been brought on for argument at the present general term of the supreme court, held at the court-house in the city of New York, in and for the first department of the State of New York;

After hearing Page & Taft, of counsel for the defendant, appellant, and John W. Hogan, deputy attorney general, of counsel for the respondents, and due deliberation being had thereon,

It is ordered, that the judgment heretofore entered in favor of plaintiffs on the 17th day of October, 1891, be, and the same is hereby, in all things affirmed, with costs of this appeal.

(A copy.)

[L. S.] WM. J. McKENNA, *Clerk.*

161 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

An appeal having been taken by the defendant herein to the general term of the supreme court from the judgment entered in favor of the plaintiffs in the office of the clerk of the city and county of New York, on the 17th day of October, 1891, and from the interlocutory judgment dated the 5th day of June, 1889, and on the same day entered in the office of the clerk of the city and county of New York, and said appeal having been brought on for argument before the said general term and due deliberation being had thereon, and an order having been made in all things affirming said judgment in favor of the plaintiffs, and against the defendant:

Now, on motion of S. W. Rosendale, attorney general, attorney for the plaintiffs herein,

It is adjudged that the judgment heretofore entered in this action in favor of the plaintiffs against the defendants, on the 17th day of October, 1891, in the office of the clerk of the city and county of New York, be, and the same is, hereby in all things affirmed; and that the plaintiffs herein, The People of the State of New York, recover of The New York, New Haven and Hartford Railroad Company, the defendant herein, the sum of eighty dollars costs and twenty-seven dollars and fifty-seven cents disbursements of
162 said appeal, amounting in all to the sum of one hundred and seven dollars and fifty-seven cents, and have execution therefor.

Judgment October 15th, 1892.

WM. J. McKENNA, *Clerk.*

(A copy.)
[L. S.]

WM. J. McKENNA, *Clerk.*

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs and Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant and Appellant.

Please take notice that the defendant and appellant above named hereby appeals to the court of appeals from the judgment of the general term of this court in and for the first department, entered herein in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered herein on the 17th day of October, 1891, and from each and every part of said judgment, and the appellant intends to bring up for review upon such appeal the interlocutory judgment herein, dated

159 Supreme Court, General Term, First Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellant.

It is hereby stipulated and agreed that the within printed case contains all the evidence given upon the trial, and is a true copy of the case containing exceptions, the judgment-roll filed June 5th, 1889, the judgment-roll upon the judgment of the general term filed February 19th, 1890, and the order and judgment entered herein October 28th, 1890; the judgment-roll filed herein October 17th, 1891, and the notice of appeal from said judgment of October 17th, 1891.

Certification of the within papers on appeal as required by section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, February 19th, 1892.

S. W. ROSENDALE,
Attorney General and Attorney for Plaintiffs and Respondents.
PAGE & TAFT,
Attorneys for Defendant and Appellant.

160 At a general term of the supreme court of the State of New York, held at the county court-house, in the city of New York, in and for the first department, on the 4th day of April, 1892.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. Morgan J. O'Brien, Hon. Charles P. Andrews, associate justices.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellants.

The appeal from the judgment entered in the above-entitled action in favor of the plaintiffs, respondents, against the defendant, appellant, having been brought on for argument at the present general term of the supreme court, held at the court-house in the city of New York, in and for the first department of the State of New York;

After hearing Page & Taft, of counsel for the defendant, appellant, and John W. Hogan, deputy attorney general, of counsel for the respondents, and due deliberation being had thereon,

It is ordered, that the judgment heretofore entered in favor of plaintiffs on the 17th day of October, 1891, be, and the same is hereby, in all things affirmed, with costs of this appeal.

(A copy.)

[L. S.] WM. J. McKENNA, *Clerk.*

161 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

An appeal having been taken by the defendant herein to the general term of the supreme court from the judgment entered in favor of the plaintiffs in the office of the clerk of the city and county of New York, on the 17th day of October, 1891, and from the interlocutory judgment dated the 5th day of June, 1889, and on the same day entered in the office of the clerk of the city and county of New York, and said appeal having been brought on for argument before the said general term and due deliberation being had thereon, and an order having been made in all things affirming said judgment in favor of the plaintiffs, and against the defendant:

Now, on motion of S. W. Rosendale, attorney general, attorney for the plaintiffs herein,

It is adjudged that the judgment heretofore entered in this action in favor of the plaintiffs against the defendants, on the 17th day of October, 1891, in the office of the clerk of the city and county of New York, be, and the same is, hereby in all things affirmed; and that the plaintiffs herein, The People of the State of New York, recover of The New York, New Haven and Hartford Railroad Company, the defendant herein, the sum of eighty dollars costs and twenty-seven dollars and fifty-seven cents disbursements of
162 said appeal, amounting in all to the sum of one hundred and seven dollars and fifty-seven cents, and have execution therefor.

Judgment October 15th, 1892.

WM. J. McKENNA, *Clerk.*

(A copy.)
[L. S.]

WM. J. McKENNA, *Clerk.*

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs and Respondents,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant and Appellant.

Please take notice that the defendant and appellant above named hereby appeals to the court of appeals from the judgment of the general term of this court in and for the first department, entered herein in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered herein on the 17th day of October, 1891, and from each and every part of said judgment, and the appellant intends to bring up for review upon such appeal the interlocutory judgment herein, dated

the 5th day of June, 1889, and on the same day entered in the office of the clerk of the city and county of New York, and the judgment of the said general term dated February 19th, 1890, and on the same day entered in the office of the clerk of the city and county
163 of New York, affirming the said interlocutory judgment.

Dated October 20th, 1892.

Yours, etc.,

PAGE & TAFT,
Attorneys for Defendant and Appellant.

To Hon. S. W. Rosendale, attorney general, and William J. McKenna, Esq., clerk.

STATE OF NEW YORK,
City and County of New York, } ss:

I, William J. McKenna, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original judgment and notice of appeal, The People of the State of New York *vs.* The New York, New Haven and Hartford Railroad Company, on file in my office, and that the same are correct transcripts therefrom and the whole of such original.

In witness whereof I have hereunto subscribed
Seal New York. my name and affixed my official seal this 17th day of November, 1892.

WM. J. McKENNA, *Clerk.*

164 Supreme Court, First Department, April, 1892.

Chas. H. Van Brunt, P. J.; Morgan J. O'Brien, Geo. P. Andrews, JJ.

THE PEOPLE, &c., Respondent,
against
THE N. Y., N. H. & HARTFORD CO., Appellant. } No. 43.

Appeal from judgment entered after trial at circuit.

Mr. Taft, of counsel for appellant.
Mr. Rosendale, of counsel for respondent.

Per Curiam:

It seems to us that all the questions which are now raised were properly before the court upon the demurrer heretofore interposed, and which has been overruled by the court of appeals; and, therefore, the judgment should be affirmed with costs.

165 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

An appeal having been taken by the above-named defendant, The New York, New Haven and Hartford Railroad Company, to the

court of appeals from the judgment of the general term of this court entered in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered herein on the 17th day of October, 1891, and said appeal having been brought on for argument in the court of appeals, and the judgment of the general term aforesaid having been in all things affirmed by the court of appeals, and an order having been made at a special term of this court on the 19th day of May, 1894, making the judgment and order of the court of appeals the judgment and order of this court—

Now, on motion of T. E. Hancock, attorney general, attorney for the plaintiffs, it is ordered that the judgment of the general term entered herein in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered herein on the 17th day of October, 1891, be, and the same is hereby, in all things affirmed, and that the plaintiffs, The
166 People of the State of New York, recover of the defendant, The New York, New Haven and Hartford Railroad Company, the costs of said appeal, adjusted at the sum of one hundred and fourteen dollars and sixty-two cents, and have execution therefor.

167 At a special term of the supreme court held at the chambers of Mr. Justice Fursman, in the city of Troy, on the 19th day of May, 1894.

Present: Honorable E. L. Fursman, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

On reading the remittitur of the court of appeals in the above-entitled action and on motion of John W. Hogan, deputy attorney general

It is ordered that the judgment and order of the court of appeals in the above-entitled action affirming in all things the judgment of the general term be, and the same hereby is, made the judgment and order of this court, and

That this order be entered and the remittitur filed in *the* New York county.

E. L. FURSMAN, *J. S. C.*

(Here follows bill of costs marked pp. 168 & 169.)

170 At a special term of the supreme court held at the chambers of Mr. Justice Fursman, in the city of Troy, on the 19th day of May, 1894.

Present: Honorable E. L. Fursman, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

On reading the remittitur of the court of appeals in the above-entitled action and on motion of John W. Hogan, deputy attorney general—

It is ordered that the judgment and order of the court of appeals in the above-entitled action affirming in all things the judgment of the general term be, and the same hereby is, made the judgment and order of this court, and

That this order be entered and the remittitur filed in *the* New York *court* N. Y.

E. L. FURSMAN, *J. S. C.*

171 [Endorsed:] Supreme court. The People of the State of New York ag'st The New York, New Haven and Hartford Railroad Company. Copy order. T. E. Hancock, attorney general, capitol, Albany, N. Y.

172 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

An appeal having been taken by the above-named defendant, The New York, New Haven and Hartford Railroad Company, to the court of appeals from the judgment of the general term of this court entered in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered herein on the 17th day of October, 1891, and said appeal having been brought on for argument in the court of appeals, and the judgment of the general term aforesaid having been in all things affirmed by the court of appeals, and an order having been made at a special term of this court on the 19th day of May, 1894, making the judgment and order of the court of appeals the judgment and order of this court—

Now, on motion of T. E. Hancock, attorney general, attorney for the plaintiffs—

It is ordered that the judgment of the general term entered herein in the office of the clerk of the city and county of New York on the 15th day of October, 1892, affirming the judgment entered

herein on the 17th day of October, 1891, be, and the same is hereby,
in all things affirmed, and that the plaintiffs, The People of
173 the State of New York, recover of the defendant, The New York, New Haven and Hartford Railroad Company, the costs of said appeal, adjusted at the sum of one hundred and fourteen dollars and sixty-two cents, and have execution therefor.

[Seal New York.]

HENRY D. PURROY, *Clk.*

174 [Endorsed:] W. H. H. 59. Supreme court. The People of the State of New York ag'st The New York, New Haven & Hartford Railroad Company. (Copy.) Judgment. T. E. Hancock, attorney general, capitol, Albany, N. Y. 50c. Filed May 25, 1894, 2 h., 10 m.

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable justices of the supreme court of the State of New York in for the first judicial district of the said State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, on a remittitur from the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, remitting to you or some of you the final decree or judgment of the said court to be enforced by you in the suit between The People of the State of New York, as plaintiffs, and The New York, New Haven, and Hartford Railroad Company, as defendant, wherein was drawn in question the validity of a statute of the said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened,
176 to the great damage of the said The New York, New Haven and Hartford Railroad Company, as is said and appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at Washington on the 21st day of July, 1894, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Seal of U. S. Circuit Court, South. Dist. New York.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 27th day of

177 June, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

BOSTON, *June* 25, 1894.

The foregoing writ is hereby allowed.

HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

178 [Endorsed:] United States Supreme Court. The New York, New Haven and Hartford Railroad Company, plaintiff in error, *vs.* The People of the State of New York, defendants in error. Writ of error. Henry W. Taft, att'y for pl'ff in error, 45 William St., New York city. Due service of a copy of within writ of error is — this 27th of June, 1894. Theodore E. Hancock, att'y gen'l & att'y for def't in error.

179 To the Honorable Horace Gray, associate justice of the Supreme Court of the United States:

And now comes the New York, New Haven and Hartford Railroad Company, by Henry W. Taft, its attorney, and complains that in the record and proceeding-, and also in the rendition of a judgment of a plea in the suit between The People of the State of New York, plaintiffs, and The New York, New Haven and Hartford Railroad Company, defendant, which is in the supreme court of the State of New York on a remittitur from the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, remitting to the said supreme court of the State of New York the record in said suit, with an order or judgment affirming the final judgment theretofore rendered in the said supreme court against the defendant and in favor of the plaintiffs on the 17th day of October, 1891, for the sum of seven thousand four hundred and seventy-nine dollars and eighty-one cents ($7,479.81) damages and costs, which
180 was thereafter affirmed at a general term of said supreme court by an order and judgment entered on the 15th day of October, 1892, with one hundred and seven dollars and fifty-seven cents ($107.57) costs, and directing that the said final judgments of the said special and general terms of the supreme court be affirmed, and that the plaintiffs recover costs of the defendant, upon which direction a final judgment of affirmance was entered in the said supreme court of the State of New York, with costs in the sum of one hundred and fourteen dollars and sixty-two cents ($114.62), wherein was drawn in question the validity of a statute of the said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all which appears in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said The New

York, New Haven and Hartford Railroad Company, the above-named defendant.

Wherefore the said The New York, New Haven and Hart-
181 ford Railroad Company, by its attorney aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

HENRY W. TAFT,
Att'y for the New York, New Haven and Hartford Railroad Company.

182 [Endorsed:] United States Supreme Court. The New York, New Haven and Hartford Railroad Company, plaintiff in error, *versus* The People of the State of New York, defendants in error. Petition for writ of error. Henry W. Taft, att'y for petitioner, 45 William street, New York city. Due service of a copy of within petition for writ of error is admitted this 27th day of June, 1894. Theodore E. Hancock, att'y general & att'y for def't- in error.

183 Supreme Court of the United States.

THE NEW YORK, NEW HAVEN AND HARTFORD Railroad Company, Plaintiff in Error,
against
THE PEOPLE OF THE STATE OF NEW YORK, Defendants in Error.
} Assignment of Errors.

And now, on the 25th day of June, in the year of our Lord one thousand eight hundred and ninety-four, at a term of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, comes the above-named The New York, New Haven and Hartford Railroad Company, by Henry W. Taft, its attorney, and says that in the record and proceedings in the above-entitled suit or matter there is manifest error, in this, to wit:

I. That the court of appeals of the State of New York enforced a law of the said State of New York, namely, chapter 616 of the Session Laws of the year 1887, passed by the legislature of the State of New York on the 18th day of June, 1887, and entitled "An act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto," and an act amendatory thereof, to wit, the statute of the State of New York known as chapter 189 of the Laws of the year 1888, entitled "An act to amend chapter 616, Laws of 1886, entitled 'An act to regulate the heating of steam passenger cars and to provide for the
184 placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto,'" and decided that said laws or either of them were not repugnant to section 8 of article 1 of the United States Constitution, providing that the Congress shall

have power to regulate commerce among the several States and to make all laws which shall be necessary and proper to carry this power into execution.

II. That the court of appeals of the said State of New York enforced a law of the said State, namely, the said chapter 616 of the Laws of 1887, as amended by chapter 189 of the Laws of 1888, and decided that said law was not repugnant to the fourteenth amendment of the Constitution of the United States on the ground that they denied to the New York, New Haven and Hartford Railroad Company, a person within the jurisdiction of the said State of New York, the equal protection of the laws, and in that they deprived the said The New York, New Haven and Hartford Railroad Company of property without due process of law.

And pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment.

HENRY W. TAFT,
Att'y for the Plaintiffs in Error.

185 [Endorsed:] United States Supreme Court. The New York, New Haven & Hartford Railroad Company, plaintiff in error, *vs.* The People of the State of New York, defendant- in error. Assignment of errors. Henry W. Taft, att'y for pl'ff in error, 45 William street, New York city. Due service of a copy of within assignment of error is admitted this 27th day of June, 1894. Theodore E. Hancock, att'y gen'l & att'y for def't- in error.

186 UNITED STATES OF AMERICA, *ss:*

To the People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 21st day of July, 1894, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York in and for the city and county of New York, within the first judicial district in said State, wherein The New York, New Haven and Hartford Railroad Company is the plaintiff in error and you are the defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Horace Gray, associate justice of the Supreme Court of the United States, this twenty-fifth day of June, 1894.

HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

187 [Endorsed:] United States Supreme Court. The New York, New Haven and Hartford Railroad Company, plaintiff in error, *versus* The People of the State of New York, defendants in error. Citation. Henry W. Taft, attorney for plaintiff in error, 45

William St., New York city. (Due.) T. E. H. Service of a copy of within citation is admitted this 27th day of June, 1894. Theodore E. Hancock, att'y general & att'y for def't- in error.

188 Supreme Court of the United States.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Plaintiff in Error,
against
THE PEOPLE OF THE STATE OF NEW YORK, Defendants in Error.

Bond for Damages and Costs.

We, Joseph Park, of Rye, N. Y., and J. Pierpont Morgan, of New York city, are held and firmly bound unto the above-named The People of the State of New York, the defendants in error, in the sum of thirteen thousand dollars, to be paid to the said The People of the State of New York; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-first day of June, one thousand eight hundred and ninety-four.

Whereas the above-named The New York, New Haven and Hartford Railroad Company has prosecuted or is about to prosecute a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the supreme court of the State of New York upon a remittitur from the court of appeals of the State of New York, in a proceeding wherein the above-named The
189 People of the State of New York are the plaintiffs and the above-named The New York, New Haven and Hartford Railroad Company is defendant:

Now, therefore, the condition of this obligation is such that if the above-named The New York, New Haven and Hartford Railroad Company shall prosecute the said writ of error to effect and answer all damages and costs if it shall fail to make said plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof we have hereunto signed our names and affixed our seals the day and year above written.

JOSEPH PARK. [SEAL.]
J. PIERPONT MORGAN. [SEAL.]

Sealed and delivered in the presence of—
HARRIET E. WANZOR,
As to Joseph Park.
WALTER B. HORN,
As to J. Pierpont Morgan.

CITY AND COUNTY OF NEW YORK, *ss:*

Joseph Park, being duly sworn, says: I am a resident and freeholder within the State of New York, and am worth the sum of

twenty-six thousand dollars over and above all my debts and liabilities which I owe or have incurred, exclusive of property exempt by law from levy and sale under an execution.

JOSEPH PARK.

Sworn to before me this 21 day of June, 1894.

[Seal of Harriet E. Wanzor, Notary Public, Kings County.]

HARRIET E. WANZOR,
Notary Public, Kings Co.

Cert. filed in New York Co.

190 CITY AND COUNTY OF NEW YORK, *ss:*

J. Pierpont Morgan, being duly sworn, says: I am a resident and freeholder within the State of New York, and am worth the sum of twenty-six thousand dollars over and above all my debts and liabilities which I owe or have incurred, exclusive of property exempt by law from levy and sale under an execution.

J. PIERPONT MORGAN.

Sworn to before me this 22 day of June, 1894.

[Seal of Walter B. Horn, Notary Public, Kings County, N. Y.]

WALTER B. HORN,
Notary Public, Kings Co.

Ctf. filed in New York county.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 21st day of June, 1894, before me personally came Joseph Park, to me known and known to me to be one of the individuals described in and who executed the foregoing bond, and he duly acknowledged to me that he executed the same.

[Seal of Harriet E. Wanzor, Notary Public, Kings County.]

HARRIET E. WANZOR,
Notary Public, Kings Co.

Cert. filed in New York Co.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 22 day of June, 1894, before me personally came J. Pierpont Morgan, to me known and known to me to be one of the individuals described in and who executed the foregoing bond, and he duly acknowledged to me that he executed the same.

[Seal of Walter B. Horn, Notary Public, Kings County, N. Y.]

WALTER B. HORN,
Notary Public, Kings Co.

Ctf. filed in New York Co.

191 [Endorsed:] United States Supreme Court. The New York, New Haven and Hartford Railroad Company, plaintiff in error, *vs.* The People of the State of New York, defendants in error.

Bond for damages and costs on writ of error. Henry W. Taft, att'y for pl'ff in error, 45 William street, New York city. The foregoing bond is hereby approved as to the form and amount thereof and as to the sufficiency of the sureties. Horace Gray, associate justice of the Supreme Court of the United States. Due service of a copy of within bond is hereby admitted this 27th day of June, 1894. Theodore E. Hancock, att'y general & att'y for def't- in error.

192 STATE OF NEW YORK, } ss:
City & County of New York, }

I, Henry D. Purroy, clerk of said city and county and clerk of the supreme court of the State of New York in and for the city and county of New York, within the first judicial district of the said State of New York, do hereby certify that the foregoing contains a true and complete transcript of the record and proceedings had in the said supreme court and in the court of appeals in the cause of The People of the State of New York, defendants in error, against The New York, New Haven and Hartford Railroad Company, plaintiff in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL NEW YORK.] HENRY D. PURROY, *Clerk.*

Endorsed on cover: Case No. 15,621. New York supreme court. Term No., 128. The New York, New Haven & Hartford Railroad Company, plaintiff in error, *vs.* The People of the State of New York. Filed July 3d, 1894.

165-628

NOV 10 1896
CLERK.

In the Supreme Court of the United States,

OCTOBER TERM, 1896.

No. 128. Error to the Supreme Court of the State of New York.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN M. BOWERS,
Of Counsel for Plaintiff in Error.

NEW YORK:
DOUGLAS TAYLOR & CO., LAW PRINTERS, 8 WARREN STREET.
1896.

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY,
Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.

No. 128.

Error to the Supreme Court of the State of New York.

Brief of Plaintiff in Error.

Statement.

On the 18th day of June, 1887, the Legislature of the State of New York passed an act reading as follows:

"Section 1. It shall not be lawful for any steam railroad doing business in this State after the 1st day of May, 1888, to heat its passenger cars on other than mixed trains by any stove or furnace kept inside of the car or suspended therefrom, except it may be lawful in case of accident or other emergency, to temporarily use such stove or furnace, with necessary fuel. Provided, that in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained, to be used only when the car is standing still. And provided also that this Act shall not apply to railroads less than fifty miles in length, nor to the use of stoves, of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining-room cars."

Section 3 provided: "Any person or corporation violating any of the provisions of this Act shall be liable to a penalty of one thousand dollars and to the further penalty of one hundred dollars for each and every day during which such a violation shall continue." (See page 4 of record.)

The Act is known as Chapter 616 of the Laws of 1887.

The following year this Act was amended by what is known as Chapter 189 of the Laws of the State of New York of 1888.

The Amendment was only to Section 1 of the Act and simply provided that the penalty for heating cars by stoves and furnaces should not take effect until the 1st day of November, 1888, and authorized the Board of Railroad Commissioners to extend the time for a period not exceeding one year from November 1st, 1888, for any steam railroad doing business in the State of New York and heating its passenger cars by any stove or furnace kept inside the car or suspended therefrom. (Record, page 5.)

The Board of Railroad Commissioners did not extend the time of the plaintiff in error, and on the 31st day of December, 1888, this suit was instituted in the Supreme Court of the State of New York to recover the general penalty provided in said Statute of one thousand dollars and further penalties in the sum of one hundred dollars for each and every day which had elapsed after November 1st, 1888, being sixty days in all, and making special penalties aggregating six thousand dollars.

The Act in question was again amended by the Laws of the State of New York for the year 1889. (See Chapter 76 of the Laws of that year.) This statute as finally amended reads:

"§ 1. It shall not be lawful for any steam railroad doing business in this State, after the first day of November, eighteen hundred and eighty-eight, to heat its passenger cars, on other than mixed trains, by any stove or furnace, kept inside the car or suspended therefrom, except it may be lawful, in case of accident or other emergency, to

temporarily use such stove or furnace with necessary fuel. Provided, that in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still, and provided also that this act shall not apply to railroads less than fifty miles in length, *nor to the cars of foreign railroad companies incorporated without the jurisdiction of the United States hauled upon railroad tracks in this State for the distance of less than thirty miles*, nor to the use of stoves of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining room cars."

The plaintiff in error is described in the complaint in this action as being a foreign corporation duly organized and incorporated under the Statutes of the State of Connecticut, and is asserted in the complaint to be engaged in business in the State of New York and in operating a steam railroad between the City of Hartford, in the State of Connecticut, and the City of New York, in the State of New York, over a route described as follows: From the said City of Hartford southwesterly thirty-six miles to the City of New Haven, in the State of Connecticut, thence westerly and southwesterly through the territory of the State of Connecticut forty-six miles to the boundary line between the States of New York and Connecticut; and thence southwesterly through the territory of the State of New York twenty six miles to the Grand Central Station, in the City of New York (Record, p. 3).

Thereupon the pleader proceeds:

"That in the operation of such railroad, such company runs trains of passenger cars over the whole of such route by steam power daily, including through trains from New York City to Hartford and from Hartford to New York City" (Record, page 3).

To the original complaint the plaintiff demurred, seeking to raise by such demurrer the questions which will be presented for the consideration of this

Court on the argument of this appeal. The demurrer was overruled by Judge O'Brien, of the Supreme Court of the State of New York, in an opinion which appears at page 8 of the Record, in which he holds that the acts in question are police regulations which the Legislature had the right to enact, the same not conflicting with any Federal or State restrictions upon the legislative power, and he further held that the act in question applied to the defendant road, being a road of more than fifty miles in length, although having but twenty-four miles in the State of New York.

Record, p. 8.

Appeal was prosecuted from this decision to the General Term of the Supreme Court of the State of New York, and Judge O'Brien's decision was there affirmed. The opinion of that Court appears at page 12 of the Record. The opinion was written by the late Judge Brady, and in it he says at page 13:

"The defendant in maintenance of the demurrer insisted that the act was not intended to apply to cars on railroad lines without the State, and that it would be unjust to compel the defendant to comply with its provisions for the reason that a construction was not to be given to a Statute which would lead to unjust or inequitable results, and further, that the defendant was an interstate railroad, and if the construction of the act was doubtful, it was to be construed in its favor."

Then, after holding that the intent of the act was to decrease the number of accidents resulting in the destruction of human life, occurring from the heating of cars by stoves, his Honor held that there could be no question about the right of the Legislature to exercise its police power, especially where it relates to the preservation of the life, as was said by the United States Supreme Court, slaughter house cases (16 Wall., 62).

Again at page 15 his Honor says:

"The acts considered are in their nature police regulations, and are not an infringement of interstate commerce or of the Federal Constitution. It is the exercise of a power intended to promote the safety and comfort of our citizens and travelling public. It is reasonable and salutary, tending to increase the passenger traffic over the defendant's road, and, therefore, benefit it, and it embraces a subject as to which Congress has made no provision. There can be no doubt that in such a case the State may adopt the necessary measures by legislation (see Sherlock *vs.* Ailing, 93 U. S. 99; Smith *vs.* Alabama, 124 U. S. 465; Nashville, &c., R. R. Co. *vs.* Alabama, 128 U. S. 96)."

An appeal was thereupon prosecuted from such decision to the Court of Appeals of the State of New York, where the same was affirmed on the opinion of Judge Brady, but with a dissent by the Chief Justice of that Court (see 123 N. Y. 635. October, 1890).

If necessary this opinion could be examined to determine whether a Federal question was raised.

Phila. Fire Assn. *vs.* N. Y., 119 U. S. 110–116.

Thereupon the defendant being allowed, interposed an answer, in which, at page 23 of the Record, it affirmatively sets up its incorporating acts; the general business that it does, its being engaged in interstate commerce, the length of its road, the number of passenger trains that it runs, its being subject to the supervision of the Board of Railroad Commissioners of the State of Connecticut. The recommendation by that Commission as to the use of a Baker heater, claimed by the People of the State of New York to be stoves, and an averment that the act sought to be enforced was unconstitutional and void.

Upon the trial of the case the plaintiff established that the defendant heated its cars by the

use of the Baker heater, which was constructed of iron, and when put up ready for use in the car is represented by a diagram shown opposite page 26 of the record. That within such heater is a fire-pot, cylindrical in form, surrounded by a curl of iron pipe. The manner in which the heater is operated is as follows: A fire is built in the fire-pot and is fed with anthracite coal through an opening in the top of the fire-pot. The curl of pipe is connected with a reservoir of water; the water in the curl becomes heated and passes out of the curl into pipes which are led and distributed through the car in which the heater is placed (page 27 of Record).

The heating was not by direct radiation, but by use of pipes, led and distributed in the car in which the heater is placed.

Upon this proof, by stipulation, the People of the State of New York rested their case.

Thereupon the plaintiff in error asked the Court to dismiss the complaint on the grounds:

"FIRST: That no cause of action had been made out in favor of the plaintiff against the defendant.

SECOND: That Chapter 616 of the Laws of 1887, and the various acts amendatory thereof, were unconstitutional and void.

THIRD.—That Chapter 616 of the Laws of 1887 and the various acts amendatory thereof are unconstitutional and void under the Constitution of the United States and especially under Section 8 of Article 1 of such Constitution, in that they interfered with interstate commerce."

Also on the further ground that said acts are unconstitutional and void under the Fourteenth Amendment of the Constitution of the United States in that they deny to the New York, New Haven & Hartford Railroad Company a person within the jurisdiction of the State of New York the equal

protection of the Laws and that they deprive said corporation of property without due process of law.

Also on the further ground that the said acts in question do not apply to a railroad whose line of road in this State is less than fifty miles in length—the fact being as disclosed by the pleadings that the line of road of the New York, New Haven & Hartford Railroad in this State is less than fifty miles in length.

Also on the further ground that the Court can take judicial notice of the fact that the New York, New Haven & Hartford Railroad Company, was, at the date of the incurring of the penalties charged in the complaint, engaged in interstate commerce and that therefore the plaintiff is not entitled to maintain this action. (See page 28 of Record.)

This motion was denied and an exception duly noted by the New York, New Haven & Hartford Railroad Company.

Thereupon the defendant proceeded to prove its incorporation—

First, the Articles of Incorporation of the Hartford & New Haven Railroad Company passed May, 1833. This corporation was empowered to locate, construct and complete a railroad from Hartford to New Haven and to the navigable waters of New Haven harbor. See Private Laws of Connecticut, volume 1, page 1002 (Record, page 33).

Second, An Act incorporating the Hartford and Springfield Company, passed May, 1835. This Act authorized the construction by the Hartford and Springfield Company of a railroad from Hartford by the most direct and feasible route to the northern line of the State of Connecticut, thence to Springfield in the State of Massachusetts, pro-

vided the company shall obtain leave from the Legislature of the State of Massachusetts so to extend the same. See Private Laws of Connecticut, volume 1, page 1006 (Record, page 37).

Section 1 of this act also provides that the persons named in the first section of the act incorporating the Hartford and New Haven Railroad Company, together with such other persons as they may associate with them, be and they were thereby constituted the Hartford and Springfield Company.

Third, An Act to incorporate the Hartford and Springfield corporation. This is a Massachusetts Act and incorporates the railroad and authorizes it to build a railroad from a point in Springfield to the north line of the State of Connecticut commencing at or near Chicopee River or at or near the Village of Springfield, and passing southerly as near the Connecticut River as is convenient, to the line of the State of Connecticut with a view to unite the said railroad with the railroad authorized by the State of Connecticut from Hartford to the line of the State of Massachusetts. See Massachusetts Special Laws, volume 8, page 116, 1839, Chapter 101 Record, page 42).

These acts also contain provisions that when the railroad shall be completed the persons who shall become stockholders in the Hartford and Springfield Railroad Company incorporated by the Legislature of the State of Connecticut shall be stockholders of the Massachusetts corporation, together with such persons as shall become stockholders in the Massachusetts corporation, and when the stockholders shall, by vote, have assented thereto, the said corporations shall become united into one corporation, by the name of the Hartford and

Springfield Railroad corporation. (Record, page 43).

The New York and New Haven Railroad Company was incorporated in 1844, Private Laws of Connecticut, volume 4, page 1020. (Record, page 45.)

This company was authorized to construct a road from the City of New Haven to the City of Bridgeport, and thence westerly to the west line of the State of Connecticut towards the City of New York.

The Legislature of the State of New York, by Chapter 195 of the Laws of 1846 (see page 51 of Record), authorized the New York and New Haven Railroad Company to extend their railroad from the Connecticut line to the New York and Harlem Railroad and to connect with said New York and Harlem Railroad at or near Williamsbridge in the County of Westchester.

A similar privilege was granted to said railroad by the State of Connecticut. See Private Laws of Connecticut, volume 4, page 1025, Record, p. 54.

The State of New York again, by Chapter 143 of the Laws of 1848 (see page 58 of the Record), authorized the New York and New Haven Railroad Company to enter upon and run their cars and engines for passengers, freights, mails, etc., over the road of the New York and Harlem Railroad Company from the point of junction of the roads of said companies at or near Williamsbridge in the County of Westchester to the City of New York and as far in to the said city as the said Harlem Railroad may extend upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies.

This agreement appears at page 62 of the record. It gave the New York and New Haven Railroad

Company the right to run its trains of every kind over the road of the New York and Harlem Railroad Company from the point of junction hereinabove specified into the City of New York, not, however, below the intersection of said railroad and Pearl Street in said city, the said New York and New Haven Railroad Company furnishing their own haulage.

In 1871, the Legislature of the State of Connecticut passed an act merging the railways of the New York and New Haven Railroad Company and the Hartford and Springfield Railroad Company into one corporation. See Connecticut Public Acts, 1871, Chapter 129. (Record, page 29.) And provided in Section 3 that said consolidated corporation should constitute a body politic and corporate, under the corporate name of the New York, New Haven and Hartford Railroad Company.

In 1872, at or about the time of the completion of the Grand Central Depot, a tripartite agreement was entered into between the New York and Harlem Railroad and the New York, New Haven and Hartford Railroad and the New York Central and Hudson River Company, applying to the use of the tracks of the New York and Harlem Railroad Company from the point of junction at Williamsbridge aforesaid to and including the entire line of said railroad over Fourth Avenue to the Grand Central Depot, in the City of New York, and the use of said depot and its yards and appurtenances of every kind (page 79 of Record).

The New York, New Haven & Hartford Railroad Company was thereafter operated as a continuous railroad from Springfield, in the State of Massachusetts, to New York, in the State of New

York, until the time of the institution of this action, and is still so operated.

In addition to these records the defendant introduced evidence at the trial which was not contradicted, tending to show (page 61 of Record) that the line of the New York, New Haven & Hartford Railroad Company was extended to Springfield, in the State of Massachusetts, and in fact this was conceded by the People of the State of New York.

In addition, it was shown that the plaintiff in error operated a road from New London to New York, from Willimantic, and from Turner's Falls in Massachusetts to New York; via New Haven from Winsted in Connecticut to New York; via Bridgeport from New Haven to Stamford, with some intermediate branches in Connecticut.

There is one other Act of the Legislature contained in the record (see page 58 of Record), Chapter 763 of the Laws of the State of New York for the year 1866, which incorporated the Harlem River and Portchester Railroad Company. This corporation was entirely a New York corporation, and it is the road constructed by that corporation which afterwards passed into the control of the New York, New Haven & Hartford Railroad Company. It is referred to at page 61 of the record in the expression "and the line from New Rochelle to the Harlem River."

The testimony then shows that the line of the road of the plaintiff in error runs over the Harlem Railroad into the City of New York. That the Harlem Railroad is reached a little above Williamsbridge, and that the distance from that point to New York is thirteen miles (Record, page 62).

The evidence then shows (page 67) that the business done by this road was between the States of

Massachusetts, Connecticut and New York; that the plaintiff in error was engaged in carrying passengers and freight and was engaged in interstate commerce. That the road runs from Springfield to New Haven, the company owning its line from Springfield to New Haven and from New Haven down to where it strikes the Harlem road at Williamsbridge. That a large proportion of the cars of the plaintiff in error never came into the City of New York; that it has branch lines, and that its entire mileage is five hundred and seventy-two miles. Of the five hundred and seventy-two miles of railroad thus owned by the plaintiff in error, all is owned and operated outside of the State of New York, with the exception of twenty-six miles. The entire line of said railroad in the State of New York is thirteen miles from the State line to the point of junction with the Harlem Railroad, and it is then operated for a further distance of thirteen miles over that railroad (page 68 of Record).

It is also conceded at page 68 of the Record, at the request of the People, that the line operated by the defendant is one continuous line of railroad from the Grand Central Depot to Springfield, Massachusetts, and passes through the various places specified in the evidence of the witnesses called.

It was further shown at page 69 of the Record that the road owned by the plaintiff in error is the main line of travel between the City of New York and Boston and the Eastern States; it is the only connecting direct road. That there were dispatched on this road from the City of New York over one hundred passenger trains a day and a very large number of freight trains and the road carries between the States of Massachusetts, Connecticut

and New York in the ordinary course of its business thousands and thousands of passengers and millions and millions of tons of freight.

The plaintiff in error equipped certain of its cars for use in the State of New York between the Harlem River and Portchester in accordance with the Statute of the State of New York (page 77).

The number of trains thus run in the State of New York only, and which the evidence tends to show were heated in accordance with the Statute of the State of New York, were three (page 78).

We submit, therefore, that the case shows a railroad engaged in interstate commerce carrying the great bulk of the passengers and freight between the Eastern States and the Central and Southern States, and was, therefore, engaged in interstate commerce, directed under heavy penalties by the People of the State of New York, not to heat its cars in a certain manner from and after the 1st day of November, 1888. The subject of heating cars is one which has been receiving the consideration of railroad experts for many years past. It was not alone dealt with by the State of New York, but likewise by the States of Massachusetts and Connecticut.

The annual report of the Railroad Commissioners of the State of Connecticut for the years 1887, 1888 and 1889 were offered in evidence. At page 72 appears an extract from the Connecticut Railroad Commissioners' report for the year 1888. Some of the material points are:

"In view of the present condition of the question of steam heating of railroad cars, as outlined above, we have thought that neither public safety nor prudence required us to order the immediate adoption of that mode of heating on the roads in this State. We have however, notified the companies that the practicability of continuous heating seemed to be so far demonstrated that, unless the present

Winter develops unexpected difficulties they may expect an order to provide for heating their passenger cars after this season by some system of continuous heating and not by fires in the cars, and directing that all new passenger cars built or purchased should be so equipped" (Record, page 72).

The following is from the Railroad Commissioners' Report of 1889:

The General Assemby of 1887 passed an Act approved May 4th, as follows: 'Section 1. It shall be the duty of all railroad companies, trustees in possession and receivers operating any railroad in this state to report to the Board of Railroad Commissioners in their several returns for the year 1887, the system of lighting and heating in use upon the passenger cars of their several roads.

Section 2. After the 1st day of November, 1887, the Board of Railroad Commissioners may make any and all orders which shall seem to them to be required by public safety and prudence relative to heating and lighting passenger cars, etc. * * * *

"Pursuant to the authority conferred by this Act. * * * * We also gave notice that a subsequent order might be expected requiring, by the present season, that all passenger cars should be provided with some system of continuous heating instead of by stoves. Our action and the reasons for it were fully given in our report last year. When those orders were issued we confidently expected that the experience of the past Winter would so far solve the difficulties involved in the system of continuous heating as to justify us in ordering that all trains other than mixed or freight trains should be so equipped before this time. But these orders brought out the fact that many of our most intelligent and experienced railroad men question whether any system of continuous heating has been sufficiently perfected to be safe and adapted to a promiscuous passenger car service without at—time subjecting passengers to considerable discomfort and possible danger. * * *

These adverse views led us to somewhat distrust the correctness of our own opinions. This distrust was increased by the fact that the experience of the Winter was not so entirely sotisfactory as was generally expected. So unsatisfactory was it that the Massachusetts Legislsture, which in 1887, as the first step towards continuous heating, had prohibited the use of common stoves, in passenger, mail or baggage cars and, also prohibited any method of heating not approved by the Railroad Commissioners thought best after the experience of last Winter by a resolution approved so late as May 29th, 1888, to direct the Commissioners to further investigate the subject of heating and lighting and report to this present session, and in the meantime to continue in force approvals of the methods of heating which had then been granted. * * * * As to com-

fort it is far from being demonstrated that steam heating adds to the comfort of passengers or is in this respect any improvement over other approved methods. * * * *

"Had the trains on our Connecticut roads been dependent on any known system of continuous heating at the time of the March blizzard, loss of life might have been added to the discomforts of those days. We were, therefore, led to inquire whether safety required, or was to be promoted by the substitution of continuous steam heating for other approved heaters. Against steam heating it is claimed that it is simply substituting the danger of being scalded for that of being burned, and that so long as safety from the first so largely depends on the spring of the reducing valve always doing its work, the danger is constantly threatening, and that this is a danger which this mode of heating has not been long enough in use to fully develop. That it is a real and not merely a possible or theoretical danger is recognized everywhere. In all systems of continuous heating efforts are made to guard against it in various ways, by reducing-valves at the engine and by so constructing the couplings that they will blow off before a pressure is reached that would burst the pipes in the cars. This danger was recently forcibly emphasized by the bursting of a steam pipe in a car on the Illinois Central Railroad resulting in a panic and rush for the doors, in which several persons were thrown down and bruised but escaped scalding. * * *

"It is stated, and so far as we know it is not denied, that the only instance in which fire was communicated to a car from a Baker heater was in the rear collision on the New York Central and Hudson River Railroad in which Mr. Wagner and others lost their lives. * * * A large majority of the passenger cars on our roads are equipped with the Baker heaters, though of the old style. * * *

"Under all the circumstances, therefore, it seemed to us unwise to issue an order requiring continuous steam heating to be substituted for existing modes before the commencement of the present season. Neither have we, as yet, ordered heaters of the Baker type to be substituted for stoves and other kind of heaters in use, although such an order would be within the scope of our authority."

Later, and on the 10th day of July, 1889, the Railroad Commissioners of the State of Connecticut served on the New York, New Haven & Hartford Railroad the following order:

"In accordance with the authority conferred upon us by Section 3568 of the General Statutes, requiring us to make such orders relative to the heating and lighting of passenger cars as are required by public safety and prudence, you are hereby ordered not to per-

mit any car heated by a common stove or by any system of direct radiation, to be attached to any passenger train while being used for the transportation of passengers upon the road operated by you, nor to permit any car to be so attached or used heated or otherwise than by steam, or by the Baker or Spear system, without special authority in writing from us." * * *

The evidence also shows, at page 69, that in Massachusetts the use of the Baker heater is approved by the laws of that State, or was at the times specified in the complaint, and that the Baker heater had been in existence on the defendants' road from 1888.

The authority of the Railroad Commissioners of Connecticut is shown by sections of the Statutes of that State, appearing at page 70 of the Record.

Upon this state of the evidence the plaintiff in error asked to be allowed to go to the jury on the question of fact as to whether the Baker heater was in violation of the Statutes of the State of New York, and was refused. Plaintiff in error then asked the Court to direct judgment in its favor on various grounds specified at page 96 of the Record. The grounds being substantially the same as those presented on the motion to dismiss, and which were the more strong when finally made because of their being supported by the evidence adduced by the defendant.

This application was denied, and thereupon the Court directed judgment in favor of the People of the State of New York for the full amount claimed. An appeal was then taken to the General Term of the Supreme Court, where the judgment entered upon direction of the Court below was affirmed, with an opinion appearing at page 100, holding that all the questions now raised had been disposed of on the demurrer.

An appeal was then prosecuted to the Court of

Appeals, where the judgment was affirmed without an opinion (see 142 N. Y. p. 646). The record was remitted to the Supreme Court of the State of New York, where final judgment was entered (Record, p. 102), and thereupon the writ of error which is now before this Court was sued out and the plaintiff in error assigned the errors on which it seeks a reversal of the proceedings of the Court of the State of New York.

"I.—That the Court of Appeals of the State of New York enforced a law of the said State of New York, namely, Chapter 616 of the Session Laws of the year 1887, passed by the Legislature of the State of New York on the 18th day of June, 1887, and entitled 'An Act to regulate the heating of steam passenger cars and to provide for the placing of guards and guard-posts on railroad bridges and trestles and the approaches thereto,' and an act amendatory thereof, to wit, the statute of the State of New York known as Chapter 189 of the Laws of the year 1888, entitled An Act to amend Chapter 616 of the Laws of 1887, * * * and decided that said laws or either of them were not repugnant to Section 8 of Article 1 of the United States Constitution providing that the Congress shall have power to regulate commerce among the several States and to make all laws which shall be necessary and proper to carry this power into execution.

II.—That the Court of Appeals of the said State of New York enforced a law of the said State, namely, the said Chapter 616 of the Laws of 1887, as amended by Chapter 189 of the Laws of 1888, and decided that said law was not repugnant to the fourteenth amendment of the Constitution of the United States, on the ground that they deny to the New York, New Haven & Hartford Railroad Company a person within the jurisdiction of the said State of New York, the equal protection of the laws, and in that they deprive the said The New York, New Haven & Hartford Company of property without due process of law" (Record, pages 105, 106).

POINT I.

The acts in question interfere with interstate commerce. The Constitution of the United States provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribe.

Article 1, Section 8.

On the 15th day of June, 1866, Congress passed the following Statute:

"Whereas, the Constitution of the United States confers on Congress in express terms the power to regulate commerce among the several States, to establish post roads and to raise and support armies, therefore, be it enacted, that every railroad company in the United States whose road is operated by steam, its successors and assigns, be and is hereby authorized to carry upon and over its road, boats, bridges and ferries, or passengers, troops, govment supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination."

14 Statutes at Large, 66.

Congress thus speaks upon the general subject. It provides that every railroad company in the United States whose road is operated by steam shall be allowed to connect with roads of other States so as to form continuous lines for transportation. The question to be determined in this case is whether the regulation sought to be imposed by the Penal Statute in question was a regulation of a nature applicable only to the special locality and affecting only the territory of the State which passed the law, or whether it was a regulation of a character

which ought to apply to the whole country. If the latter, the mere silence of Congress upon such a subject, over which it had unquestioned jurisdiction, is conceded to be a declaration that in those respects commerce shall be free and unregulated by statutory enactment.

If the former, and a mere aid or convenient administration of commerce, the Statute in question would stand as the lawful exercise of the police power, though incidently affecting commerce.

The foregoing provision of the Constitution has been so frequently before this Court for application to various facts that we shall not attempt to argue to any extent the general principles that have been laid down by this Court, but rather call the attention of the Court to a few of the authorities which seem most pertinent here, and content ourselves with the argument, which tends to show that the regulation in question is one which affects the interest of the people of various States and is, therefore, a regulation of commerce, and that the law is in no sense an aid, but rather a grave detriment, to commerce.

Justice Peckham, in his opinion in the case of Western Union Telegraph Company against James, 162 U. S. 650, says (654):

"It is urged that although there is no statute of Congress expressly providing a penalty for a failure to deliver telegraphic messages impartially and with due diligence, yet, still the very fact of the absence of such legislation is equivalent to a declaration by Congress that no penalty should be affixed, and that the company should be left free to pursue its business untrammeled by any state legislation upon the subject.

"In regard to those matters relating to commerce which are not of a nature to be affected by locality, but which necessarily ought to be the same over the whole country, it has been frequently held that the silence of Congress upon such a subject, over which it had unquestioned jurisdiction, was equivalent to a declaration that in

those respects commerce should be free and unregulated by any statutory enactment Welton *vs.* Missouri, 91 U. S. 275, 282; Hall *vs.* De Cuir, 95 U. S. 485, 490. The matters upon which the silence of Congress is equivalent to affirmative legislation are national in their character, and such as to fairly require uniformity of regulation upon the subject-matter involved affecting all the States alike. Mobile County *vs.* Kimball, 102 U. S. 691.

"In Covington, &c., Bridge Co. *vs.* Kentucky, 154 U. S. 204, 209, Mr. Justice Brown, in delivering the opinion of the Court, said: 'The adjudications of this Court with respect to the power of the State over the general subject of commerce are divisible into three classes: First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the State cannot interfere at all.' On page 211 of the report are cited many cases as coming within the second class, among which are laws for the regulation of pilots; for quarantine and inspection; for policing harbors; improving navigable channels; regulating wharves, piers and docks; constructing dams and bridges across navigable waters of a State; and also laws for the establishment of ferries. In relation to the power of Congress to regulate commerce in cases of the second class, it is said that it is not its mere existence but its exercise by Congress which may be incompatible with the exercise of the same power by States, and that the States may legislate in the absence of Congressional regulations. Sturges *vs.* Crowninshield, 4 Wheat. 122, 193. When the subjects in regard to which the laws are enacted, instead of being of a local nature affecting interstate commerce, but incidentally, are national in their character, then the non-action of Congress indicates its will that such commerce shall be free and untrammeled. It has been held that it is not every enactment which may incidentally affect commerce and the persons engaged in it that necessarily constitutes a regulation of commerce within the meaning of the Constitution." * * *

"The statute in that case, after providing that common carriers of passengers should have the right to refuse certain classes of undesirable and improper persons passage on their vehicles, gave the power to carriers to expel such persons after admissions, and also gave them power to expel all who should commit any act in violation of the rules and regulations prescribed for the management of the business of the carrier after such rules and regulations should have been made known, 'provided such rules and regulations make no discrimination on account of race or color;' and the statute also prohibited all persons engaged in the business of common carriers of passengers, except in the cases enumerated, from refusing admission to their conveyances or from expelling therefrom any person whatsoever. The plaintiff was a person of color and took passage

upon the steamboat owned by the defendant's intestate on her trip up the river from New Orleans to Hermitage, both within the State of Louisiana. Being refused accommodations on account of her color in the cabin especially set apart for white persons, she brought an action under the provisions of the State Act above referred to for the purpose of recovering damages sustained on account of such refusal. The defense set up was that the statute was inoperative and void as to the owner of the steamboat, because as to his business it was an attempt to regulate commerce among the States, and it was so held here. Although, in the case in question, the passage was taken from and to a point both of which were within the State of Louisiana, it was held that such fact was not material; that the effect of the statute necessarily was to regulate interstate commerce."

The Court, speaking by Mr. Chief Justice Waite, said:

'While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced.

It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other

of his route is a necessity in the business, and to secure it Congress, which is untrammelled by State lines, has been invested with the exclusive legislative power of determining what such regulations shall be.

'It is seen,' says Judge Peckham, 'from this reasoning that the foundation for holding the act void was that it necessarily affected the conduct of the carrier and regulated him in the performance of his duties outside and beyond the limits of the State enacting the law.'"

In the particular case under review, Justice Peckham held, that a statute of the State of Georgia requiring every telegraph company to deliver despatches to the persons to whom the same were addressed on payment of any charges due, providing such persons or their agents resided within one mile of such telegraph station, or within the city or town in which said station was, is valid for the reason that no attempt was made to enforce the provisions of the State's statute beyond the limits of the State, and no other State could by legislative enactment affect in any degree the duty of the company in relation to the delivery of messages within the limits of the State of Georgia, and that the general effect of the statute was in aid of the performance of the general duty owned by the company, and that it was not a regulation of commerce, but a provision which only incidentally affected it.

Justice Peckham further says (662):

"While it is vitally important that commerce between the States should be unembarrassed by vexatious state regulations regarding it, yet on the other hand there are many occasions where the police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of those who are engaged in interstate commerce. We think the statute in question is one of that class, and in the absence of any legislation by Congress the statute is a valid exercise of the power of the State over the subject."

In the case of Hall *vs.* De Cuir, 95 U. S. 485, Chief Justice Waite lays down the rule as follows (487):

"There can be no doubt but that exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. 'The difficulty,' he says, 'has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it; for, as has been often said, legislation may in great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution.'

Justice Waite further says: 'Thus in Munn *vs.* Illinois, 94 U. S. 113, it was decided that a State might regulate the charges of public warehouses, and in Chicago, Burlington & Quincy Railroad Co. *vs.* Iowa, *Id.* 155, of railroads situate entirely within the State, even though those engaged in commerce among the States might sometimes use the warehouses or the railroads in the prosecution of their business. So, too, it has been held that States may authorize the construction of dams and bridges across navigable streams situate entirely within their respective jurisdictions. * * * It has also been held that health and inspection laws may be passed by the States, Gibbons *vs.* Ogden, 9 Wheat., 1; and that Congress may permit the States to regulate pilots and pilotage until it shall itself legislate upon the the subject, Cooley *vs.* Board of Wardens, &c., 12 How. 299. The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. * * *

'But,' he says, 'we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress.'"

He then uses the language referred to in Justice Peckham's opinion.

Justice Clifford, in his opinion in the same case, says (497):

"Difficulty may attend the effort to prescribe any definition which will guide to a correct result in every case; but it is clear that a regulation which imposes burdensome or impossible conditions on those engaged in commerce, whether with foreign nations or among the several States, must of necessity be national in its character. * * *

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Apply that rule to the case, and it is clear, even if there be a class of State regulations which may be valid, until the same ground is occupied by an act of Congress or by a treaty, that the State regulation in question is not one of that class.

Such a subject is in its nature national, and admits of only one uniform system or plan of regulation. Unless the system or plan of regulation is uniform, it is impossible of fulfillment. Mississippi may require the steamer carrying passengers to provide two cabins and tables for passengers, and may make it a penal offense for white and colored persons to be mixed in the same cabin or at the same table. If Louisiana may pass a law forbidding such steamer from having two cabins and two tables—one for white and the other for colored persons—it must be admitted that Mississippi may pass a law requiring all passenger steamers entering her ports to have separate cabins and tables, and make it penal for white and colored persons to be accommodated in the same cabin or to be furnished with meals at the same table. Should State legislation in that regard conflict, then the steamer must cease to navigate between ports of the States having such conflicting legislation, or must be exposed to penalties at every trip."

The statute of the State of Mississippi of March 2d, 1888, requiring all railroads carrying passengers in that State to provide equal but separate accommodations for the white and colored races was alone held not to be within the doctrine of the case of Hall *vs.* De Cuir, because the highest Court in the State of Mississippi held that the Statute only applied to commerce within the State.

"Louisville, New Orleans & Texas Rwy. Co. *vs.* Mississippi," 133 U. S. 587.

In Brimmer *vs.* Rebman, 138 U. S. 78, a statute of the State of Virginia declaring it unlawful to offer for sale within the limits of that State any beef, veal or mutton from animals slaughtered one hundred miles or more from the place at which it was offered for sale, unless it had been previously inspected and approved by local inspectors appointed under that act, was held void, as being in

restraint of commerce among the States and as imposing a discriminating tax upon the products and industries of some States in favor of the products and industries of Virginia.

While in Wabash, St. Louis & Pacific Railway Co. *against* Illinois, 118 U. S. 557, it was held that a law regulating the charges of carriers, which was applied by the Supreme Court of that State to a charge made for a shipment from Peoria, Ill., to New York was void as a regulation of commerce.

The case of Leisy *vs.* Hardin, 125 U. S. 100, held that the statute of the State of Iowa prohibiting the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the State was, as applied to a sale by an importer, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the clause of the constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

In this case many of the general propositions for which we contend are laid down by Chief Justice Fuller. He says (page 108):

"And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action. * * * The power to regulate commerce among the States is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances, until Congress otherwise directs; but

the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries and highways belongs to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety and the welfare of society, originally necessarily belonging to, and upon the adoption of the Constitution reserved by the States, except so far as falling within the scope of a power confided to the general government. Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress and cannot be encroached upon by the States; but where, in relation to the subject matter, different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the nature of the power granted to the general government, are strictly not such, but are simply local powers which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power. * * *

Whenever, however, a particular power of the general government is one which must necessarily be exercised by it, and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the general government intended that power should not be affirmatively exercised, and the action of the States cannot be permitted to effect that which would be incompatible with such intention. Hence, inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammelled" (page 109).

At page 112:

"The legislation of Congress on the subject of interstate commerce by means of railroads designed to remove trammels upon transportation between different States and upon the subject of the transportation of passengers and merchandise (Revised Statutes, S. S. 4252 to 4289, inclusive), including the transportation of nitro glycerine and other similar explosive substances with the proviso that, as to them, 'any State, territory, district, city or town within the United States' should not be prevented by the language used 'from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction

thereof into such limits for sale, use, or consumption therein,' is referred to as indicative of the intention of Congress that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by States in particular cases by the express permission of Congress."

Again at page 114:

"Can it be supposed that by omittting any express declaration on the subject, Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be Articles of Traffic in the interstate commerce of the country? If so, it has left to each State according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured or sold in any State and sought to be introduced as an Article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States it may also include tobacco or any other article the use or abuse of which it may deem deleterious."

At page 119:

"The doctrine now firmly established is, as stated by Mr. Justice Field in Bowman *vs.* Chicago, etc., Ry. Co., 125 U. S. 507, 'that there the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons, and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free."

The case of Minnesota against Barber, 136 U. S. 313, held that an act for the protection of the public health by providing for inspection, before slaughtering of cattle, sheep and swine designed for slaughter for human food was unconstitutional and void so far as it required as a condition of sales in Minnesota of fresh beef, veal, mutton, lamb or

pork, from other States that the animals should be inspected in that State before being slaughtered.

The Statute in that case prohibited the sale of any fresh beef, etc., except as provided in the act.

The second and third sections of the act provided that all cattle and swine to be slaughtered for human food should be inspected by the proper local inspector within twenty-four hours before the animals were slaughtered.

The fourth section of the act made it a misdemeanor, punishable by a fine, etc., for any person to sell, expose or offer for sale for human food in this State any fresh beef, veal, mutton, lamb or pork whatsoever which had not been taken from an animal inspected in accordance with the act.

Justice Harlan says (page 322):

"As the inspection must take place within twenty-four hours immediately before the slaughtering, the act, by its necessary operation, excludes from the Minnesota markets, practically, all fresh beef, veal, mutton, lamb or pork—in whatever form, and although entirely sound, healthy and fit for human food—taken from animals slaughtered in other States."

Justice Harlan then proceeds to say (page 322):

"It will not do to say—certainly no judicial tribunal can, with propriety, assume—that the People of Minnesota may not, with due regard to their health rely upon inspections in other States, of animals there slaughtered for purposes of human food."

At page 323:

"Our duty to maintain the Constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota Statute. If this legislation does not make such discrimination against the products and business of other States in favor of the products and business of Minnesota as interferes with and burdens, commerce among the several States, it would be difficult to enact legislation that would have that result."

The case of Bowman against Chicago and Northwestern Railway Company, 125 U. S., 465, is also on the question of the Statutes of Iowa forbidding

common carriers to bring intoxicating liquors into the State without being first furnished with a certificate under the seal of the Auditor of the County to which it is to be transported or consigned, further certifying that the consignee or person to whom it is to be transported or delivered is authorized to sell intoxicating liquors in the county, and it was held that although this statute was adopted without a purpose of affecting interstate commerce, but as part of a general system designed to protect the health and morals of the people, that it was neither an inspection law, nor a quarantine law, but was essentially a regulation of commerce among the States affecting interstate commerce in an essential and vital part and was repugnant to the Constitution.

The case of Stanley *vs.* Wabash, St. Louis & Pacific Railroad Co., 3 Interstate Commerce Reports, 176, held void a statute requiring railroad companies to furnish double-deck cars for sheep. The statute was in this language:

"All railroad companies, private companies or individuals owning or operating a railroad or railroads in the State of Missouri are required to furnish a sufficient number of double-deck cars for the shipment of sheep to supply the demand for such cars on their respective lines, and to allow shippers to load both decks in said cars with sheep to the aggregate extent of 20,000 lbs., which cars so loaded shall be received and transported by such railroad companies, private companies or individuals as one car-load of stock, and it shall not be lawful for said railroad companies, private companies or individuals to charge or receive for the transportation of a double-deck car of sheep more than the legal rate of freight for the shipment of stock."

This was a Missouri statute, and it was held to have extra-territorial force and to apply to interstate shipments; and Judge Sherwood, in the Missouri Supreme Court, held that the statute was an attempted violation of commerce and violated

Article I, Section 8, of the Constitution of the United States.

In the case of Smith *vs.* Alabama, 124 U. S. 465, this Court held valid statutes of the State of Alabama requiring locomotive engineers in the State of Alabama to be examined and licensed by a Board to be appointed for that purpose as against the contention of an engineer operating a train between Mobile, in the State of Alabama, and Corinth, in the State of Mississippi, and who never drove or operated a train within the exclusive limits of the State of Alabama. The opinion is by Justice Matthews. He held that the provisions on the subject contained in the statute of Alabama under consideration, were not regulations of interstate commerce. He says (480):

"No objection to the statute, as an impediment to the free transaction of commerce among the States can be found in any of its special provisions. It requires that every locomotive engineer shall have a license, but it does not limit the number of persons who may be licensed nor prescribe any arbitrary conditions to the grant. The fee of five dollars, to be paid by an applicant for his examination, is not a provision for raising revenue, but is no more than an equivalent for the services rendered, and cannot be considered in the light of a tax or burden upon transportation. The applicant is required, before obtaining his license, to satisfy a board of examiners in reference to his knowledge of practical mechanics, his skill in operating a locomotive engine, and his general competency as an engineer, and the board, before issuing the license, is required to inquire into his character and habits, and to withhold the license if he be found to be reckless or intemperate.

"Certainly, it is the duty of every carrier, whether engaged in the domestic commerce of the State or in interstate commerce, to provide and furnish itself with locomotive engineers of this precise description, competent and well qualified, skilled and sober; and if, by reason of carelessness in the selection of an engineer not so qualified, injury or loss are caused, the carrier, no matter in what business engaged, is responsible according to the local law admitted to govern in such cases, in the absence of congressional legislation." * * *

"If a locomotive engineer, running an engine, as was the peti-

tioner in this case, in the business of transporting passengers and goods between Alabama and other States, should, while in that State, by mere negligence and recklessness, in operating his engine, cause the death of one or more passengers carried, he might certainly be held to answer to the criminal laws of the State if they declare the offence in such a case to be manslaughter." * * *

"Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demands the use of specific guards and precautions. The width of the gauge, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals, at points of special danger, the rate of speed at stations and through villages, towns and cities, are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of Congress exerted on the same subject, that they can be required to give way to the supreme authority of the Constitution."

The case of the Nashville, Chattanooga & St. Louis Ry. *vs.* Alabama, 128 U. S., 96, is very much the same as the last case. "A Statute of Alabama, which took effect on the 1st day of June, 1887, 'for the protection of the traveling public against accidents caused by color blindness and defective vision,' declares that all persons afflicted with color blindness and loss of visual power to the extent therein defined are 'disqualified from serving on railroad lines within the State in the capacity of locomotive engineer, fireman, train conductor, brakeman, station agent, switchman, flagman, gate tender, or signal man, or in any other position which requires the use or discrimination of form or color signals.'"

It was contended that this statute was repug-

nant to the power vested in Congress to regulate commerce among the States.

The Court held that this question was determined by the case of Smith *vs.* Alabama, above referred to and say, at page 99:

"Color blindness is a defect of a vital character in railway employees in the various capacities mentioned. Ready and accurate perception by them of colors and discrimination between them are essential to safety of the trains, and, of course, of the passengers and property they carry." * * * * Defects of vision in such cases on the part of any one employed may lead to fatal results. Color blindness, by which is meant, either an imperfect perception of colors or any inability to recognize them at all, or to distinguish between colors, or between some of them, is a defect much more common than is generally supposed. * * * * With some the defect is congenital, with others brought on by occupations in which they have been engaged or by vicious habits in the use of liquors or food in which they have indulged. It presents itself in a great variety of forms, from an imperfect perception of colors to absolute inability to recognize them at all."

"Such being the proportion of males thus affected it is a matter of the greatest importance to safe railroad transportation of persons and property that strict examination be made as to the existence of this defect in persons seeking employment on railroads in any of the capacities mentioned."

"It is conceded that the power of Congress to regulate interstate commerce is plenary; that, as incident to it, Congress may legislate as to the qualifications, duties and liabilities of employees and others on railway trains engaged in that commerce; and that such legislation will supersede any state action on the subject. But, until such legislation is had, it is clearly within the competency of the states to provide against accidents on trains whilst within their limits."

It is thus apparent that in every instance the question whether a local statute complained of or sought to be enforced is, in fact, a regulation of commerce or a mere local regulation in aid of commerce is one to be determined on the facts of the particular case. The Supreme Court of the United States have time and again determined such questions. The answer that the people of the State wish to protect its citizens against the evils of intemperance was not sufficient to prevent this Court

from decreeing Statutes intended to accomplish such result to be in violation of the Constitution of the United States.

Statutes of the States of Virginia and Minnesota to protect the health of its inhabitants against impure meat failed under the determination of this Court that in fact they did regulate commerce.

The Statute of the State of Louisiana regulating the manner of carrying passengers while it would have been perfectly valid so long as applied entirely to travel within that State, fell under the ban of the Constitution when sought to be applied against a steamboat engaged in interstate commerce.

On the other hand, the Alabama cases sustained the right of the Legislature to make local regulations for the management and guidance of railroads, even though they be engaged in interstate commerce.

But in these latter cases the regulations were clearly not of a character to interfere with interstate commerce.

In the case now before this Court for consideration the evidence shows that the railroad is engaged in interstate commerce. Indeed, that it is the main line of travel between the New England States and the South and Southwest.

The evidence discloses that the Baker heater which was used for the purpose of heating the cars of this railroad was used in accordance with the Laws of the State of Massachusetts and in accordance with the express approval of the Railroad Commissioners of the State of Connecticut.

It therefore followed if the law of which the plaintiff in error complains is to be enforced that either the plaintiff in error had to stop each of its trains at the State line as it entered New York and

change its method of heating its cars, or change its passengers from one car to another, or it might be in conflict with the regulations of one or other of the States. It could start its train from Springfield, connecting as it does with Boston, with cars coming on from the City of Boston, heated with Baker heaters. It could continue the journey of such train to Hartford with the cars thus heated. It could continue the journey of the train to New Haven and to the New York State line, with the cars thus heated. There its trains would have to stop and a complete change would have to be made in the manner of heating its cars.

Indeed, it might well happen that the State of Massachusetts would require the heating of the cars of the railroads operated in that State by means of common stoves, while the Legislature of the State of Connecticut might require the heating of cars in that State by Baker heaters or some other method by it deemed more appropriate, and the State of New York might require the heating of the same cars by steam.

These regulations would make interstate commerce on this road impossible. They are regulations of a national character affecting all the travellers upon the line and tend to disrupt and break up the great commerce of the road of the plaintiff in error.

Nor is the question of the safety of heating by steam so clearly established as to bring the case within the language of the decisions of this Court in the Alabama case above referred to.

The report of the Railroad Commissioners of the State of Connecticut, contained in the record in this case, shows that at the very time of the institution of this suit the best experts in the country

differed in their views of the safest method to be adopted in the heating of cars, and differed so seriously that the Connecticut Railroad Commissioners who had the year before almost come to the point of ordering the cars of railroads in that State to be heated by steam, changed their ideas, and while they permitted steam, also expressly authorized the use of the Baker heaters with which the cars of the plaintiff in error were heated.

The right of the State of New York to regulate bridges on the railroads within said State, flagmen, speed of the trains, licensing of engineers, vision of the employees and many other such matters may not be called in question. They are matters of local concern and do not seriously interfere with interstate commerce, but the right to direct the character of cars to be used, as for example, that cars of only a certain width, which would conflict with the width of cars used by interstate railroads in an adjoining State or the method of coupling cars which would compel the coupling and uncoupling of cars at the State line or any other regulation which would apply to a train engaged in the business of interstate commerce, and on which the Legislatures of different States might readily adopt different regulations, is questioned by this appeal.

Indeed, it is difficult to see what possible element in transportation requires uniformity of transportation more than the matter in dispute. It may be conceded that the question of heating cars is one with which legislation should deal. How shall that legislation be provided? Shall each State in the Union adopt its own course? Shall Massachusetts say one sort of a heater shall be used on the cars in that State, Connecticut another, New York a third and Pennsylvania a fourth?

Cars are run upon the trains of the plaintiff in error from Boston straight through to Washington, and on portions of its road cars run from Boston through to Albany, and so on to Cincinnati, St. Louis and Chicago. Must all these cars be changed in their method of heating in accordance with the whim of the Legislatures of the different States through which they pass, or is it one of those legislative regulations of commerce which is appropriate and should be governed by Congress alone legislating for all the States and all railroads alike?

A conflict of regulations concerning the heating of cars between the States makes safe and rapid travel impossible. To stop an express train on its trip of two hundred and thirty miles from New York to Boston after it had run twenty-six miles, at the Connecticut State Line for the purpose of changing from one set of cars to another, or from one heater to another, and then to make another change at the Massachusetts State line would be a hardship upon public travel which could not be endured.

Many of these cars also run over the Harlem River Branch, with its fourteen miles in New York, being transported through New York Harbor on large ferry-boats and thence through Pennsylvania, Delaware and Maryland to Washington, and many of these cars on the return pass through Connecticut and Rhode Island on their way to Boston.

If the transportation of a keg of beer from the State of Illinois to Iowa is sacred under the Constitution against the police power of the State of Iowa, it would seem as if the machinery to transport it was within the same sanctity.

This is not at all like the cases of fencing and

gates and flagmen along the line, and engineers, which are necessary local things. The Act under consideration is a direct attack upon the transportation itself through the States where uniformity is necessary.

If the State of New York requires this Company to heat its cars by steam and the State of Connecticut requires heat by protected stoves and the State of Massachusetts requires heating by water from the outside of the car, and the State of Rhode Island (having control of part of the Shore Line) requires heating only by electricity, the vast interstate business of the road would be brought into hopeless confusion and destruction?

Steam heating of trains engaged in interstate commerce is by no means the only safe method of heating the cars, and therefore the doctrine of the Alabama cases where good vision and proper knowledge as an engineer are conceded by all to be necessary, have no application.

The whole matter is one that should be settled by the Interstate Commerce Commission, or by Congress.

POINT II.

The Court of Appeals of the State of New York decided in affirming the judgment rendered in this case that the acts complained of applied to railroads engaged in interstate commerce.

The evidence in the case showed clearly that the entire length of the road owned or operated by the plaintiff in error in the State of New York was

only twenty-six miles. The evidence tended to show the three trains operated in the State were heated in accordance with the statute in question, and further the statute expressly provided that it should not apply to roads of less than fifty miles in length.

The plaintiff in error introduced in evidence at the trial the charter of the railroad on which these particular trains were run, and the recovery, as was plainly shown by the record, was not and could not have been on account of the running of trains on that branch of the road of the plaintiff in error.

At page 78 of the Record the plaintiff in error asked that the defendant in error be compelled to elect as to whether it sought to get these penalties as to trains running wholly within this State or running within the State of Connecticut, because if they choose to make their election as to these three trains referred to running from the Grand Central Depot to Portchester, within this State, I ask their complaint be dismissed on the ground that it is not a road fifty miles in length.

After some further argument by counsel, the Court said:

"Your purpose will be served by a stipulation that the local trains were on a line less than fifty miles in length."

Whereupon plaintiff's counsel stated:

"That appears by the evidence—that it is less than fifty miles from the Grand Central Depot to Portchester—we concede that.

"DEFENDANT'S COUNSEL: Yes, it is proved that it is less than fifty miles from here to Portchester.

"THE COURT: Then that covers your point. I think they have the right to rely upon both propositions."

No further opinion was rendered in any of the Courts, and in view of the language of the statute that it should not apply to a railroad less than

fifty miles in length, it necessarily follows that recovery was allowed against this road by reason of its mileage in the States of Massachusetts and Connecticut. Indeed, this is distinctly stated in the only opinions that were ever written by Judges O'Brien and Brady at the time of the argument of the demurrer.

The Federal questions arise in this case from the very nature of the recovery, where the evidence shows that the road of the party complaining is only of a length which brings it within the ban of the statute by adding thereto miles of its railway in another State. That fact shows that recovery under the Statute is only had against it by reason of such mileage in another State.

Thereupon the Federal question comes in that the Penal Statute which has been enforced in this action is in violation of the Constitution of the United States, because it interferes with the commerce carried upon such interstate railroad.

POINT III.

The judgment of the Court below was in violation of Article 14 of the Constitution.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws " (Article 14, Section 1).

The statutes complained of in this case are not applied to railroads of fifty miles, or less in length.

It is true that there does not thereby follow any special privilege to or discrimination in favor of railroads with their entire line in the State of New York. For it might happen that a railway of fifty miles or less in length had part of its road in the State of New York and part of its road in some adjoining State.

The discrimination that was really made in the statute occurred in the Amendment of 1889, which provided that the statute should not apply to cars of foreign railroad companies incorporated without the jurisdiction of the United States hauled upon railroad tracks in this State for a distance of less than thirty miles.

This was intended to protect the Grand Trunk Railway from the operation of the statute. That railway being a foreign railway and operating some thirty miles of its road in this State, was discriminated in favor of. The mere statement of the proposition shows the discrimination.

The plaintiff in error had more than five hundred miles of railway, only twenty-six of which was within this State.

This case was was tried on the 7th day of October, in the year 1891 (Record, p. 25).

All these statutes were then in full force. It followed that the statute was to be enforced with its various amendments as it then stood. If it had been repealed prior to the trial, the penalty could not have been enforced.

U. S. *vs.* Passmore, 4 Dallas, 372.

Yeaton *vs.* U. S., 5 Cranch, 281.
The Schooner Rachael *vs.* U. S., 6 Cranch, 329.
Hartung *vs.* People, 22 N. Y. 95.
Sections 478 and 479, Endlich on the Interpretation of Statutes.

The same effect follows any modification of a penal statute which exempts, without special reservation, a particular class from its operation.
Conclusion of Section 478, Endlich, &c.

In Commonwealth *vs.* Leftwich, 5 Rand. 657, and in Hartung *vs.* People, 22 N. Y. 95, the Act of the Legislature in both cases changed the punishment for the particular offense of which the person had been convicted and at the same time repealed all acts inconsistent with the new act. While the decision in both cases went upon the general grounds that the original Act was repealed without a saving clause, yet in the New York case the question of the power of the Legislature to impose a new punishment was examined and held unconstitutional as an *ex post facto* law.

In Commonwealth *vs.* Welch, 2 Dana. (Ky.), 330, the Court held that the modification of an Act could be availed of with the same force as its repeal and that such subsequent modification exonerated the defendant from the payment of fines incurred under the statute thus modified. The precise facts of that case were a prosecution against Welch for the recovery of a fine for keeping a tavern without complying with certain provisions of an Act of December, 1831. By an Act passed in February, 1834, persons keeping taverns not within a town or city nor within a half mile thereof were freed

from this fine. It appeared from the evidence that Welch was not subject to pay a fine under the provisions of the Act of 1834 unless his tavern was within a town or city or within a half mile thereof. No proof was given on this point. The application for the fine was made in March, 1833, and the Court held that if the Circuit Court had enforced the law as it then stood judgment should have been rendered against Welch for the fine. The appeal was heard in the Fall Term of 1834 and the modification of the statute was held to have discharged all offenders against the Act of 1831 whose taverns were not in a city or town or within a half mile thereof.

The reasoning of the Supreme Court of the United States in the case of Voight against Wright, 141 U. S. 62, holding void the Statute of Virginia as to the inspection of flour is that the law in question is a discriminating law, and requires the inspection of flour brought from other States when such inspection is not required for flour manufactured in Virginia.

The same doctrine was laid down in Brimmer vs. Rebman, 138 U. S. 78.

It is the controlling doctrine of the case of Minnesota against Barber, 136 U. S. 313–319.

It is true that these cases and others of the same character go generally upon the proposition of a discriminating law in favor of the citizens of the State where the law complained of is enacted.

It cannot be said that the statute now complained of discriminates in favor of citizens of the State of New York. On the contrary, the discrimination is in favor of a citizen of a foreign country granted privileges refused to a railroad incorporated under the laws of another and sister State, operating four

miles less of road in the State of New York than the foreign railroad thus freed from the restraints of the Statute.

While private corporations are not citizens within the meaning of the first sentence of the Article 14, Sec. 1, of the Constitution (Paul *vs.* Virginia, 8 Wallace, 168), they are persons within the meaning of the last sentence, "No State shall deny to any person the equal protection of the laws."

Charlotte R.R. *vs.* Gibbes, 142 U. S. 391.

And the proposition that ordinarily private corporations may be regulated in their operation within the State or driven therefrom by an exercise of sovereignty will not apply in this case.

The statute in question does not purport to forbid the doing of business within the State by the plaintiff in error. Nor does it limit the conditions of doing business; nor is it in the nature of a license to do business in the State. It is a statute made by the Courts of the State of New York to apply to a corporation long after it had lawfully come into the State. It had been admitted by express act. Corporations situated precisely as the plaintiff in error have repeatedly applied to this Court for relief, and have been given protection. Where they are lawfully in the State they may seek redress against a tax imposing upon them conditions not imposed against their competitors.

In Machine Company *vs.* Gage, 100 U. S. 676, the Howe Machine Company, a corporation of the State of Connecticut, sued in the State of Tennessee to recover a tax demanded from and paid by one of its agents, and it failed only because the

Courts held that the statute in question applied to all peddlers of sewing machines, no matter where manufactured.

In Steamship Companies *vs.* Port Wardens, 6 Wall. 31, a similar suit was maintained by the Southern Steamship Company of New Orleans, though in that case the recovery went more upon the right to levy the tax at all than upon the question of discrimination.

The decision of the Supreme Court of the United States in Gloucester Ferry Company *vs.* Pennsylvania, 114 U. S. 196, is in accord with this contention.

The tax in that case, to wit, upon the landing of passengers, was held to be a direct tax upon commerce.

The principle we consider supported in that case is that it is alone the license or tax as a right to do business within the State that the corporation cannot complain of, but it may assail any other tax in the same manner as any other individual.

The case of Commonwealth of Penna. *vs.* Standard Oil Co., 101 Penna. State, 119, referred to at length by the Supreme Court in Gloucester Ferry Company *vs.* Penna., is in point.

In that case the corporation was doing business in Pennsylvania, and that State sought to impose a tax upon all of its capital stock. This was contested, the corporation claiming it could only be taxed upon so much as was represented by property of the company invested and used in the State. Now, the Supreme Court of Pennsylvania, in determining that question, held that it was undoubtedly competent for the Legislature to lay a franchise or license tax upon foreign corporations for

the privilege of doing business within the State, but that the tax in that case was in no sense a license tax.

The right of a State to exclude a corporation does not apply to a corporation engaged in interstate commerce. While we have not claimed that Congress has legislated directly upon the question of heating cars, yet we respectfully submit that it has legislated directly upon the right of the plaintiff in error to run its trains into the State of New York. Such is the statute quoted on page 18 of our brief.

So are the decisions of this Court in Pembina *vs.* Penna., 125 U. S. 181; Pensacola Telegraph Company *vs.* Western Union Telegraph Company, 96 U. S. 1, where Chief Justice Waite says:

"We are aware that, in Paul *vs.* Virginia (8 Wall., 168), this Court decided that a State might exclude a corporation of another State from its jurisdiction, and that corporations are not within the clause of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'—Art. 4, Sec. 2. That was not, however, the case of a corporation engaged in interstate commerce; and enough was said by the Court to show that, if it had been, very different questions would have been presented. The language of the opinion is: 'It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals. * * *

"'This state of facts forbids the supposition that it was intended in the grant of power to Congress to exclude from its control the commerce of corporations.

"'The language of the grant makes no reference to the instrumentalities by which commerce may be carried on. It is general, and includes alike commerce by individuals, partnerships, associations and corporations.'"

Id., page 12.

LAST POINT.

It is respectfully submitted that the judgment of the Supreme Court of the State of New York should be reversed and the cause remanded to that Court, with directions to enter judgment for the plaintiff in error.

JOHN M. BOWERS,
Of Counsel for Plaintiff in Error.

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SUPREME COURT

OF THE

UNITED STATES.

No. 128.

The NEW YORK, NEW HAVEN and HARTFORD RAILROAD COMPANY,
Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendants in Error.

BRIEF FOR THE PEOPLE OF THE STATE OF NEW YORK.

T. E. HANCOCK.
Attorney General, State of New York.

SUPREME COURT

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No. 128.

The NEW YORK, NEW HAVEN and HARTFORD RAILROAD COMPANY, Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK, Defendants in Error.

Brief of Attorney General, State of New York, on behalf of Defendants in Error, the People of the State of New York.

STATEMENT.

This appeal is taken to the Supreme Court of the

United States for the purpose of reviewing the record, evidence and proceedings in pursuance of which a judgment was entered in favor of the People of the State of New York against the New York, New Haven and Hartford Railroad Company for the sum of $7,497.81 damages and costs. (Page 26, Fol. 42) which judgment was duly affirmed by the General Term of the Supreme Court and the Court of Appeals of said State of New York (Page 99, Fols. 161-170). The action was commenced to recover penalties against the Railroad Company for violation of the provisions of the statutes of said State, to wit: Chapter 616, Laws of 1887 and Chapter 189, Laws of 1888. Said chapters appear in full at pages 4 and 5 of the printed case. The material portions of the statutes under consideration read as follows:

"Sec. 1. It shall not be lawful for any steam railroad doing business in this State after the first day of November, Eighteen hundred and eighty-eight, to heat its passenger cars, on other than mixed trains by any stove or furnace kept inside the car or suspended therefrom, except it may be lawful, in case of accident or other emergency to temporarily use such stove or furnace with necessary fuel. Provided, that in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still. And provided also that this act shall not apply to railroads less than fifty miles in

length, nor to use of stoves of a pattern and kind to be approved by the Railroad Commissioners, for cooking purposes in dining cars."

"Sec. 3. Any person or corporation violating any of the provisions of this act shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such a violation shall continue."

The New York, New Haven and Hartford Railroad Company is a corporation organized under the Statutes of the State of Connecticut and engaged in business in the State of New York, in operating a continuous line of steam railroad, from Springfield, Massachusetts, through New Haven, Connecticut, and on to the City of New York, striking the boundary line between the States of New York and Connecticut at Port Chester, twenty-six miles from the Grand Central Depot in New York City. Of the twenty-six miles operated from New York to Port Chester in this State, thirteen miles of road is owned by the defendant and the remaining thirteen miles is operated under a lease between defendant and the New York and Harlem Company, the total mileage of defendant being 572 miles. (Page 61, Fols. 103-104.) In the operation of its railroad, the Company runs trains or passenger cars over the whole of such route, by steam power, daily, including through trains from New York City to Springfield, and from Springfield to New York City. (Page 68, Fols. 113, 130). Nearly all the material allegations in the

complaint were admitted in the answer and by stipulations read on the trial. It affirmatively appears, and is not controverted by the defendant, that from the 2nd day of November, 1888, to the 31st day of December, 1888, both inclusive, it heated its passenger cars run daily over its railroad upon through trains (other than mixed trains) and over that part of the road lying within the State of New York, by stoves kept within its cars as the regular and usual method of heating, without any extension of time granted by the Railroad Commissioners of the State of New York; and, in short, that during all this time, it violated the provisions of the statutes and thereby incurred penalties amounting in the aggregate to the sum of $7,000.

The Statute as first passed provided that the law should go into effect May 1st, 1888, (Chapter 616 of the Laws of 1887). The only change made by the amendment of 1888 was that the Statute should take effect November 1st, 1888, (Laws of 1888, Chapter 189). By the amendment of 1889 (Chapter 76 of the Laws of 1889) it was provided in Section 1 that the Act should not apply "to the cars of foreign railroad companies incorporated without the jurisdiction of the United States hauled upon Railroad Tracks in this State, for a distance of less than thirty miles."

Much of the argument of the learned counsel for the plaintiff in error has been addressed to this latter amendment, that the Statute shall not apply to the cars of foreign railroad companies incorpor-

ated without the jurisdiction of the United States hauled upon railroad tracks within this State for a distance of less than thirty miles. It will be remembered that this amendment was passed after the action here under consideration was commenced, and the penalties to recover which the suit was instituted had accrued.

It would be sufficient answer to this portion of his argument to call attention to the proposition that there is not here any attempt to discriminate in favor of railroad companies incorporated under laws of the State of New York or having their entire line within its borders. But the amendment in no way affects this action, if we were to assume that there was any force in the contention of the learned counsel for the Plaintiff in Error; for the most that can be said with reference to the amendment is that, if it were concedly unconstitutional, the amendment itself would fall, leaving the original statute unaffected.

An unconstitutional amendment to a valid Statute does not render the statute itself invalid; but the amendment itself is nugatory.

Ex parte Davis, 21 Fed. Rep., 396.
Stephens vs. Ballou, 27 Kansas, 594.
Miller vs. Eedwards, 8 Colo., 529.
In re Petty, 22 Kansas, 489.
Devoy vs. Mayor, 36 N. Y., 449.
Norton vs. Shelby Co., 118 U. S., 442.

It is incorrect to state and erroneous to assume

that there is now or was at the time the judgment was rendered against the plaintiff in error anything antagonistic between the Statutes of New York, Connecticut and Massachusetts. There was nothing to prevent the New York, New Haven and Hartford Railroad Company from discontinuing the use of a stove or furnace (such as the Baker Heater) consistently with the statutes of the latter States; in fact it appears that in each of these States at the same time the extreme danger of using a stove or furnace in passenger coaches, was agitating the public mind and receiving the attention of the railroad commissioners and legislatures of these States. The Statutes of New York were in no way in conflict with the laws of Massachusetts or Connecticut, the legislature of New York having made the very provision which the legislature and railroad commissioners of the other two States had in view.

In fact, it is so much a matter of common observation, that perhaps we may assume that the Court would take judicial notice that the pipes used in connection with the Baker Heater have been utilized in the State of New York, and can be easily utilized in any case for continuous steam heating by making the proper connections. The recent horrible train wreck occurring within the last few days near Birmingham, Alabama, in which the cars were entirely consumed by fire emphasizes the wisdom of the legislative action taken by the New York Legislature. It was very clearly the intent of the Board of Rail-

road Commissioners of the State of Connecticut to require a continuous system of steam heating, as appears from their report of the year 1889. At page 124, Folio 494, they say: "So considerable, and in the State of New York so complete has been the adoption of continuous heating, that the present winter must demonstrate a success or a failure fo the system, and determine what action should be taken in this State. We believe it will prove a success, and that those of our railroad Managers who now think it impracticable and unsafe will involuntarily be lead to its adoption, and should the opinion of the Attorney General of the State of New York be sustained our companies will be compelled so to equip their trains running into that State." It appears moreover that the Commissioners of the State of Massachusetts never took any action pro or con with reference to the use of the Baker Heater, but that it was used there without objection upon the part of the authorities, folios 500 to 503.

The necessity of stopping trains at the various state lines for the purpose of changing from one set of cars to another or from trains using one method of heating to those using another, is *purely imaginary.* The plaintiff in error by ceasing the use of stoves and furnaces would, while obeying the laws of New York, be acting in entire accord with the Statute regulations of Connecticut and Massachusetts. It was plainly the purpose of the legislature of the State of New York that railroad companies while

doing business in that State should be subject to these Statutory regulations, and that persons coming into that State or taking passage there should be freed from the danger and mental apprehension caused by stoves and furnaces placed in passenger coaches. It is apparent that the intent of the legislature of the State of New York in enacting these Statutes and their practical effect was to protect the lives and property and to secure the safety of its citizensand of people within its jurisdiction. While this legislation may incidentally affect commerce, it is not a regulation of it within the meaning of the constitution, and its only affect upon commerce would be of a beneficial nature.

1st. In preventing the destruction of human lives by fire in cars of railroad accident.

2nd. In preventing the destruction of the baggage of passengers, from like causes.

3rd. In the same manner by preventing from destruction the cars and property of railroad companies.

4th. In encouraging travel by assuring the public that some of the horrors attendant upon railroad accidents would be prevented.

Notwithstanding the fact that the plain and only intent of the law is to protect the traveling public, a purpose certainly commendable in itself, and while it is conceded that it is a matter concerning which Congress has not legislated, and which it has not

attempted to control, it is claimed that the Statute contravenes the Federal Constitution.

Points.

I.

The statutes under consideration are not violative of section one of the fourteenth amendment of the Constitution of the United States.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

1. These statutes do not abridge the privileges or immunities of citizens of the United States. Corporations are not citizens.

Pembina Mining Co. vs. Pennsylvania, 125 U. S., 181.

Paul vs. Virginia, 8 Wallace, 168.

Special privileges enjoyed by citizens of Massachusetts and Connecticut in their own States are not secured to them in the State of New York by any constitutional provision.

Same case, 125 U. S., 188.

Whatever rights may be granted to or restrictions imposed upon the State's own citizens, these are the measure of the rights and restrictions of citizens of the United States or of other States within its borders.

Slaughter House Cases, 16 Wall, 77.
Merchant vs. Penn. R. R. Co., 153 U. S., 380.

2. The Statute does not deprive any person of property without due process of law. The statute prohibits the use of property which the Legislature deems dangerous to the traveling public. This is not within the constitutional inhibition.

Mugler vs. Kansas, 123 U. S., 628, 668.

A prohibition simply upon the use of property is not an appropriation.

Same case.

3. Neither does it deny to any person within the State's jurisdiction the equal protection of the laws. The defendant can claim only equal protection with New York corporations.

It is not violative; Article IV, Section 2 of the Federal Constitution: "The citizens of each State "shall be entitled to all privilege and immunities of "citizens of the several States."

Slaughter House Cases, 16 Wallace, 36.

II.

The Statute is not an infringement of the Inter-State Commerce clause of the Federal Constitution.

"The Congress shall have power * * * 3, to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."

(a.) The statute is a reasonable and salutary regulation and one obviously tending to increase the passenger traffic over the defendant's road.

(b). it is intended to promote the safety and comfort of citizens of the State of New York, and all persons within and coming within our borders, and no attempt is made to enforce the statute in other states.

(c.) It is within a field as to which Congress has made no regulation; and is not a case where the silence of Congress is equivalent to an enactment.

In such cases the State may itself make regulations.

Sherlock vs. Alling, 93 U. S., 99.
Smith vs. Alabama, 124 Id., 465.
Nashville C., &c., R. R. Co. vs. Alabama, 128 Id., 96.

(d.) When the subject of legislation is not national in character, requiring uniformity of

regulation, or when the legislation is confined to such matters as are within the right of State supervision over persons and property within the State, the action of the State legislators will be upheld. When the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, Congress alone can act upon it, and provide the needed regulation. If there were a law of Congress requiring passenger trains to be heated in a particular way, there would then be a conflict in this particular case between national and state legislation; but the statute in question is a regulation affecting the preservation of the lives and limbs of citizens, and is a legitimate subject of State legislation. No powers are deemed taken from the States except:

"1. Where the power is restricted to Congress in terms.

2. Where the power is taken from the States and given to Congress.

3. Where, from the nature and subjects of the power, it must necessarily be exercised by the national authority."

Laws of states which do not fall within such enumeration are held to be valid. As such may be cited inspection law, quarantine laws, laws regu-

lating pilots, and health laws of every description.

Gibbons vs. Ogden, 9 Wheat., 20.

Covington vs. Kentucky, 154 U. S., 211.

A law of a state which says what shall not be used, where the intention is, as is manifest in this case, to prevent the recurrence of such horrors as have often occurred, cannot be said to be any usurpation of the powers of Congress.

Leisy vs. Harden, 135 U. S., 108.

Thorpe vs. Rutland & B. R. R. Co., 27 Ver., 140.

R. R. Com. Cases, 116 U. S., 307.

The power is vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, which are not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power, than to mark its boundaries or prescribe limits to its exercise.

Com. vs. Alger, 7 Cush., 53.

U. S. vs. Reese, 92 U. S., 214.

U. S. vs. Cruikshank, 92 id., 542.

Enactments which incidently affect commerce and the persons engaged in it do not necessarily constitute a regulation of commerce.

Western U. T. Co., vs. James, 162 U. S., 657.

Hall vs. DeCuir, 95 U. S., 485.
N. C. & St. Louis Ry. vs. Alabama, 128 U. S., 96.

III.

In adopting these statutes the Legislature of the State of New York exercised the ordinary police power vested in the several States

The tenth amendment to the Constitution of the United States provides that "The powers not delegated to the United States by the Constitution, nor prohibited by the States are reserved to the States respectively, or to the people."

This has particular reference to what is commonly known as the police power vested in the several States to make adequate provision for securing the comfort and health, guarding the lives and limbs and protecting the property of citizens or persons within the Jurisdiction of the several States.

It would not be seriously urged that the legislature of the State of New York has not ample authority to prevent by prohibitory Statute the use by Railroad Companies within this State of cars which were infected with dangerous diseases, or running gear plainly inadequate to sustain the weight placed upon it, or brakes clearly unfit for operation, or locomotiveswithout headlights or catchers. The fact that the cars ran into or across other States would not

affect the question. The purpose of the interstate commerce provision of the Constitution was not to restrict the police powers of the several States, but to prevent States from attempting to regulate commerce between the several States, by taxing persons or property coming from one State into another, prohibiting importation, imposing duties, placing burdensome conditions as a prerequisite to the entry of goods or individuals from one State to another, or passing laws intended to give undue advantage to the persons and property of the State enacting such laws.

Leisy vs. Hardin, 135 U. S., 100.

Bowman vs. Chicago & Northwestern R. Co., 125 U. S., 465.

Welton vs. the State of Missouri, 91 U. S., 275.

The law has been clearly stated to the effect that "States cannot by legislaion place burdens upon commerce with foreign nations or among the several States, but upon an examination of the cases where these decisions were rendered it will be found that the legislation adjudged invalid imposed a tax upon some instrument or subject of commerce, or enacted a license fee from parties engaged in commercial pursuits, or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles and between particular places was required to be conducted. In all the

cases the legislation condemned operated *directly upon commerce* either by way of tax upon its business, license upon its pursuit in particular channels or conditions for carrying it on."

Sherlock vs. Alling, 93 U. S., 99.

Smith vs. Alabama, 124 U. S., 474.

The law was enacted in obedience to an imperative and reasonable public demand, that the system of heating passenger coaches on railroads by stoves or heaters kept within such carriages should be superceded by methods less dangerous. That appalling accidents and great loss of human lives occurred under the former system of car heating, and that such system was condemned by public opinion as contributing immeasurably to the horror of many railroad calamities, are matters of public notoriety. In an inquiry concerning the purpose, character and intent of the legislation, the court will not fail judicially to notice such facts, as well known, indeed, as any other fact of our State and national history.

Swinnerton vs. Ins. Co., 37 N. Y., 174.

Woods v. Wilder, 43 N. Y., 164.

Agawam Bank v. Streever, 18 N. Y., 502.

Isaacson v. N. Y. C. & H. R. R. Co., 94 N. Y., 278, 284.

People v. Arensburg, 103 N. Y., 398.
Mayor, etc., v. Sands, 105 N. Y., 210.

In elucidating the intent of the legislation—if ,indeed, such intent be not obvious—and in determining the scope of such intent, the court will recur, when necessary, to the history of the evil conditions the statutes were intended to remedy.

People v. Supervisors, 43 N.Y., 130, 132.
Ayers v. Lawrence, 59 N. Y., 192, 195.
Hudson I. Co. v. Alger, 54 N. Y., 175.
U. S. v. U. P. R. R. Co., 91 U. S., 79.

The statute is, upon its face, remedial. The fact of its enactment is, therefore, evidence that in the opinion of the Legislature, an evil existed, and that a remedy was necessary.

Cronin v. People, 82 N. Y., 318, 323.

The Supreme Court of the United States said in the Slaughter House cases (16 Wall., 62): "The police power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly settled community." And the court cites with approval the case of Thorpe v. R. & B. R. (27 Vt., 149), which declares: "The police power extends to the protection of the lives

limbs, health, comfort and quiet of all persons, and the protection of all property within the State."

The Legislature of the State of New York, except wherein restrained by the State and Federal Constitutions, has parlimentary omnipotence.

People ex rel. v. Flagg, 46 N. Y., 401.

People ex rel. v. Comstock, 78 N. Y., 356, 361.

Matter of Thirty-fourth Street R. R. Co., 102 N. Y., 342, 350.

People v. Squires, 145 U. S., 175.

As to the right of the Legislature to impose restraints and burdens upon persons and property in order to secure the general comfort, health and prosperity of the State and its citizens under the police power, "no question ever was or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned."

Thorpe v. R. & B. R. Co., 27 Vt., 149, supra.

All property is held, subject to the general police power of the State, to regulate and control its use, to secure the general safety and the public welfare.

Bertholf v. O'Reilly, 74 N. Y., 509.

Munn v. Illinois, 94 U. S., 113.

Minneapolis & St. Louis Railway Co.,
v. Emmons, 149 U. S., 364.

Whether the remedy for the evil provided by the legislation is a wise one or will be effective in practice is not for the court to inquire.

> The Supreme Court of the United States said in Powell v. Pennsylvania (127 U. S., 686), in sustaining the constitutionality of a State statute prohibiting the sale of oleomargarine, "If all that can be said of this legislation is that it is unwise, the appeal must be to the Legislature, not the judiciary. The latter cannot interfere without usurping powers committed to another branch of government." And so, "It is purely a question of legislature power. If the power to legislate exists, the court has nothing to do with the policy or wisdom of the interference in the particular case."
>
> People v. Budd, 117 N. Y., 25.
> Id., 143 U. S., 517.

It was the intent of the Legislature that the defendant should be subject to the regulations within the State of New York.

> Judicial cognizance will not ignore general facts patent to common observation as to the course of the railroad business throughout the State.
>
> Slater v. Jewett, 85 N. Y., 61, 68.
> Isaacson v. N. Y. C. R. R. Co., 94 N. Y., 278, 284.

Short railroads in this State are merely local conveniences or side tracks. In no case are they part of any trunk or through system of passenger transportation. Naturally, therefore, only local trains are run thereon. A road only fifty miles in length would seldom, if ever, have a sleeping car attached to its trains, except that possibly in the warm season such a car might be run for the accommodation of persons going from the metropolis to some out-of-the-way, but popular, summer resort. The terror that has been felt on account of the car stove is usually associated with the sleeping car, or with long trains of passenger coaches. On short lines, used only for local traffic there are no long trains of coaches to be telescoped into each other. On such roads one passenger car and the baggage car makes a train, or the passenger car is attached to a freight train.

A similar proviso or exception in favor of short roads is implied in section 3 of chapter 582 of the Laws of 1864, which declares that every railroad company whose line of road shall exceed forty continuous miles in length shall, for the comfort of passengers, provide in each passenger car drinking water and a cup. There is no

doubt as to what was in the mind of the Legislature in excepting short roads from the regulation, when the frequency of stopping places of local trains is considered.

Then, to, it needs only a suggestion to at once impress the mind with the increased liability to accident, other things being equal, that the traveler incurs when riding on a trunk line where the flyer trains are numerous to and fro, over that which arises on a short local line with only a train a day, perhaps, each way, running on a slow schedule.

The statutes, therefore are clear in the intent to protect people in the State of New York from a peril which, under the old system of heating cars, was inseparable from, characteristic of, and peculiar to travel on trunk through railroad lines. It was the intent of the legislation that every person taking passage within the State of New York, on any road of such length, that he might ride fifty miles in one car and over the same line in one continuous trip, and every person coming into the State by such road should, while within the State be free from the peril to life and constant mental apprehension caused by the car stove and the patent heater.

The statute should receive such construction as will effectuate its obvious purpose. It should be liberally construed for the public good.

Ayers v. Lawrence, 59 N. Y., 192.
Smith v. People, 47 N. Y., 330.

Under the rules defining the character of public facts, of which the courts will take cognizance above cited, and numerous other cases to the same effect, such as Smith v. N. Y. & C. R. R. Co., (43 Barb., 225), and Maghee v. C. &A.R.T. Co., (45 N. Y., 514), in which, without proof, the courts took notice of the great lines of public travel, the court will not here refuse to consider the fact that that portion of the line of the defendant which lies between the cities of New York and New Haven, a distance of upwards of seventy miles, is a part of the only direct route between New York and Boston, and that over such line numerous fast through trains run daily, to and fro, between the metropolis and Boston.

It is to be supposed that the Legislature in defining a beneficial and salutory remedial policy intended to deny to the thousands of citizens of the State, who ride daily between the great centers of New

York and New England, the protection of the solemnly declared policy of the State?

It is within the power of the Legislature to subject the defendant to the regulation within the State of New York.

Because the statutes were in the exercise of the police power and all persons within the State must obey an exercise of that power.

The defendant was and is doing business within the State of New York only by permission of the State, and may be regulated in its operations within the State, or driven from the State by an exercise of sovereignty.

Fire Association v. New York, 119 U. S., 110.

Doyle Case, 94 U. S., 535.

The defendant, even upon the most extensive theory of its rights, can claim only equal privileges, equal immunities and equal protection with New York railroad companies.

Paul v. Virginia, 8 Wall., 168.

Corfield v. Coryell, 4 Wash., 371.

Ex Parte Kinney, 3 Hughes, 9.

C. C. & A. Co. v. Gibbes, 142 U. S., 386.

The humane, progressive and enlightened policy

of the legislature is not to be nullified upon the theory that it is an attempt to regulate the defendant in its business outside the State.

> We concede that such an attempt would be beyond the power of the State. Being obviously outside the legislative power, it will not be presumed that such was the intention of the acts, but it will be presumed that the Legislature intended to effect a regulation wholly within the purview of its powers, because the acts under consideration are capable of the latter construction. As was said by Ruger, Chief Judge, in People v. Home Insurance Company (92 N. Y., 328, 344), "In other words, the rule of construction claimed is, that we should impute to the Legislature an unlawful intent in a case where its action is plainly sustainable upon justifiable grounds. Well and long settled rules forbid us from placing such an interpretation upon statutory enactments, and require us to make every reasonable intendment to uphold rather than to nullify the exercise of legislative authority."

But the language of the statute is not ambiguous. It is a general act "to regulate the heating of steam passenger cars." And section 1 provides "it shall not be lawful for any steam railroad doing business in this State," etc. This language is definite and has a precise meaning, and it must be presumed to declare the intent of the Legislature.

and it is not allowable by conjecture to restrict or extend its meaning.

Johnson v. H. R. R. R. Co., 49 N. Y., 455-462.

Matter of Miller, 110 N. Y., 222.

Purdy v. N. Y. and N. H. R. R. Co., 61 N. Y., 353.

It is respectfully submitted that the judgment should be affirmed—and writ of error dismissed.

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